United States Court of Appeals

for the Second Circuit

APPENDIX

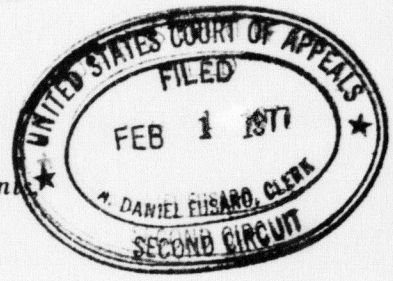
76-7434

ORIGINAL

United States Court of Appeals

For the Second Circuit

Docket No. 76-7434



MICHAEL MEEROPOL and ROBERT MEEROPOL,

Plaintiffs-Appellants,

—against—

LOUIS NIZER, DOUBLEDAY & CO., INC. and FAWCETT PUBLICATIONS, INC.,

Defendants-Appellees.

On Appeal from the United States District Court
for the Southern District of New York

APPENDIX

VOLUME II
Pages A212 thru A426

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AFFIDAVIT OF LOUIS NIZER
IN SUPPORT OF MOTION SWORN TO JANUARY 29, 1975

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MICHAEL MEEROPOL and ROBERT MEEROPOL,

Plaintiffs,

-against-

LOUIS NIZER, DOUBLEDAY & COMPANY, INC. and FAWCETT PUBLICATIONS, INC.

Defendants.

AFFIDAVIT

73 Civ. 2720 (HRT)

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

LOUIS NIZER, being duly sworn, deposes and says:

1. I am one of the defendants in this action. I submit this affidavit in support of all of the defendants' motion for summary judgment dismissing Count I of the complaint and supplemental complaint on the ground that the defense of fair use is dispositive of that count as a matter of law and as a consequence thereof, for summary judgment dismissing Count III of the complaint and supplemental complaint on the ground that Count III is predicated upon Counts I and II*, and, therefore.

* Count II of the complaint has already been dismissed by order of this Court dated July 31, 1974 on the grounds that The Implosion Conspiracy neither libeled the plaintiffs nor invaded their privacy, or alternatively, that defendants were privileged in their actions by reason of the First Amendment. 381 F. Supp. 29, leave to appeal denied (October 25, 1974); petition for a writ of mandamus denied (January 9, 1975).

does not state a claim upon which relief may be granted. Finally, defendant Fawcett Publications, Inc. moves for summary judgment dismissing Count II of the supplemental complaint on the ground that the issues raised therein are identical with those raised in Count II of the complaint, which has already been dismissed.

COUNT I

2. Count I of the complaint alleges that my book, The Implosion Conspiracy, published by Doubleday & Company, Inc., infringed upon the statutory copyright owned by plaintiffs in the Death House Letters. Count I of the supplemental complaint extends the claims of infringement to include Fawcett Publications, Inc., the publisher as Doubleday's licensee of the soft cover edition of The Implosion Conspiracy. In our answers to the complaint, Doubleday and I pleaded various affirmative defenses including fair use, consent, lack of standing, public domain and laches. In its decision denying plaintiffs' motion for a temporary injunction, this Court denied our cross-motion to dismiss Count I on the ground of fair use "without prejudice to renewal thereof upon an expanded record." 361 F. Supp. 1063, 1070. Since then, Count II of the complaint has been dismissed, plaintiffs have responded to written interrogatories, parties and a witness have been deposed, parties have produced thousands of pages of documents and numerous motions and appeals have

taken place. The record is sufficiently "expanded" to support a dismissal of the remaining Counts.

THE LEGAL TEST OF THE DEFENSE OF FAIR USE

3. As demonstrated in Point I of the accompanying memorandum of law, in determining what constitutes "fair use", the Courts have looked to the following three factors:

(a) the amount and substantiality of the material used;

(b) the purpose and character of the use, i.e., in the case of historical or biographical works whether distribution of the material serves the public interest in the free dissemination of information; and

(c) the nature of the copyrighted work and whether the copying reduces the demand for the copyrighted property. When measured by these criteria, it is indisputable that the alleged utilization of excerpts from the Death House Letters in The Implosion Conspiracy falls squarely within the defense of fair use as a matter of law.

a) The First Criterion; Amount and Substantiality of Material Used

4. In their answers to interrogatories (¶1) plaintiffs allege that I used 28 excerpts from the Death House Letters in The Implosion Conspiracy.* Of these 28 excerpts,

* Although this Court's prior opinion listed twenty-nine letters as being the subject of Count I, (361 F. Supp. at 1065) that number was based on the list contained in plaintiffs' affidavit, sworn to June 18, 1973, in support of the motion for a preliminary injunction (¶18), as corrected by the answering affidavit of George Berger, sworn to June 26, 1973 (¶¶13, 18).

For the purposes of this motion, we have added the letter (dated May 31, 1951), which plaintiffs listed for the first time in ¶1 of their answers to interrogatories, but have subtracted two letters (dated June 16 and June 19, 1953) which in fact did not appear in Death House Letters at all or in the answers to interrogatories. These letters appeared in a publication entitled, The Testament of Ethel and Julius Rosenberg, which according to our search of the records of the Copyright Office, was never registered for copyright in this country. In addition, these letters had been previously published in 1953 in England in The Rosenberg Letters by Dennis Dobson, Ltd., an authorized licensee of Jero Publishing Company, Inc. the registrant of Death House Letters. Our search of the records of the Copyright Office failed to turn up any application by anyone for ad interim protection pursuant to 17 U.S.C. §22. Consequently, as demonstrated in Point II of the accompanying memorandum of law, there is no valid United States copyright in these two letters.

there is not one single incident of an entire letter being u

Indeed, most of the excerpts used in The Implosion Conspira

are very small fragments of the letters as they appear in De

House Letters.* By actual word count, the total number of words employed in The Implosion Conspiracy, which were taken from these 28 letters, totals 1,957.** The approximate total

---

* See analysis at 381 F. Supp. at 35.

** Although there is ample evidence to support a finding that if not all of these letters, were in the public domain (vid 361 F. Supp. at 1069), this motion will assume that a valid copyright still exists as to these letters in order to avoi any issue in which a material fact may be in dispute.

word count of the Death House Letters is 81,000. Thus, the material allegedly taken, constituted a scant .024 of the Dea House Letters. When viewed from the dimensions of The Implos Conspiracy, the figures show an even less substantial claim. The approximate total word count of The Implosion Conspiracy 228,900. Thus, the allegedly infringing material constitutes only .0085 of The Implosion Conspiracy. This Court has alrea held:

> "From a quantitative viewpoint, the quoted letters make up a very small portion of The Implosion Conspiracy." 361 F. Supp. 1063 at 1066.

5. Furthermore, The Implosion Conspiracy contains pages. The first allegedly infringing reference does not occu until page 393, after nearly eighty percent of my book has be completed. All of the 28 excerpts appear on portions of only pages*** of The Implosion Conspiracy. If all of these 28

*** Pages 393-95, 398-401, 403-04, 411-14, 422, 437-39.

excerpts were reproduced consecutively in my book, they would have been entirely accomodated on 4-1/5 pages of this 495 page book, or .0085 thereof.*

6. Thus, applying the first criterion of the defense of fair use, quantity, the alleged infringement is de minimus to the vanishing point.

b) Purpose and Character of Use

7. It is beyond dispute that the Rosenberg case was an event of great historical significance which even today continues to command the attention of the public. 361 F. Supp. at 1068, 381 F. Supp. at 34.

8. As this Court has already stated:

> "As I read The Implosion Conspiracy the quotations were used with discretion and with demonstrable purpose to illustrate, from an historical and legal point of view, the post-conviction appeals and petitions for clemency which were filed by and for Mr. and Mrs. Rosenberg. The relevant portions of the book almost certainly will provide reasonably valuable source material for future historians, biographers and social scientists."

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* A single page of defendants' book can accomodate 48 lines of type of the size used for quotations throughout the book. The total number of lines of type involved in these 28 excerpts are 202.

* * *

"Thus, defendants are likely to prove that their book is a serious, full and readable account of what was a trial of great historical interest; that resort to quotations of certain of the Rosenberg letters is important to any serious book on this trial . . ." 361 F. Supp.1068. See also 381 F. Supp. at 38.

As shown in the accompanying memorandum of law, that purpose is encompassed within the defense of fair use. Consequently, the second criterion of the defense is met.

c) Nature of the Copyrighted Work and Whether its Demand has been Reduced

9. Although both Death House Letters and The Implosion Conspiracy deal with Julius and Ethel Rosenberg, the similarity between them ends there. My book is essentially a study of the trial itself, the post-conviction appeals, the numerous appeals for clemency and the Rosenbergs' utlimate execution. On the other hand, Death House Letters is essentially a compilation of letters written by the Rosenbergs.

10. No one interested in reading the published correspondence of the Rosenbergs would purchase The Implosion Conspiracy. It can hardly be claimed that my book is a substitute for Death House Letters and has therefore reduced the commercial demand for thatbook.

11. Furthermore, as this Court has previously found, "The parties agree that Death House Letters has been out of publication for almost twenty years" and, "there is absolutely no suggestion, let alone proof, that the publication of The Implosion Conspiracy has lessened the value of the letters of Julius and Ethel Rosenberg." 361 F. Supp. at 1065, 1069-70. Documents produced at the deposition of James Aronson, one of the trustees for the Rosenberg Children's Trust Fund ("The Fund"), demonstrate that sales of Death House Letters and the income derived therefrom, even at its peak, were minimal.

12. Thus, the proceeds from sales of Death House Letters appear to have been received by two entities, Jero Publishing Company, Inc., the original publisher and copyright claimant from June, 1953 until 1956* and The Rosenberg Children's Trust Fund thereafter. 361 F. Supp. at 1066. The financial statement of Jero Publishing Company, Inc. for 1953 and 1954 shows the following:

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* Jero Publishing Company, Inc. was formally dissolved in

	Year Ended June 30, 1953**	June 30, 1954**
Income from Sales	$1,073.06	$11,097.93
Cost of Goods Sold	915.50	3,471.74
Gross Profit on Sales	157.56	7,626.19
Expenses	140.75	1,137.42
Net Profit (Before Other Income)	16.81	6,488.77
Income from Foreign Royalties	--	5,986.60
Net Profits (Before Taxes)	16.81	12,475.37
Total Taxes	25.00	4,219.49
Net Profit or Loss	($ 8.19)	$ 8,255.88

From 1954 on, the Income from Sales and Income from Foreign Royalties undoubtedly include income from sales of The Testament of Ethel and Julius Rosenberg ***, a revised edition of the

January, 1957. 361 F. Supp. at 1066.

** Exhibit 1 annexed (marked as Exhibit 25 on the deposition of James Aronson, p. 199).

*** As previously set forth (¶4, fn.), this book was never registered for copyright in the United States and is not the subject of this action.

letters contained in Death House Letters, with additional material.

13. The financial statement of Jero Publishing Company, Inc. for the years 1955* and 1956** show the following:

	Year Ended 6/30/55	Year Ended 6/30/56
Income from Foreign Royalties	$ 6,035.66	$ 1,988.22
Income from Sales	4.97	.96
Total Income	6,040.63	1,989.18
Expenses	619.06	143.84
Net Profit (Before Taxes)	,421.57	1,845.34
Total Taxes	1,808.84	615.58
Net Profit	$ 3,612.73	$ 1,229.76

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* Exhibit 2 annexed (marked as Exhibit 26 on the deposition of James Aronson, p. 199).

** Exhibit 3 annexed (marked as Exhibit 27 on the deposition of James Aronson, p. 199).

14. There is no financial statement for Jero Publishing Company covering its operations after June 30, 1956. In Exhibit B of the financial statement for The Rosenberg Children's Trust Fund for the year ended June 30, 1957 (prepared by the same Certified Public Accountant), it appears that Jero Publishing Company, Inc. was liquidated on August 31, 1956 and had no income between June 30, 1956 and August 31, 1956. (Exhibit 4, annexed).***

15. The financial statements of The Rosenberg Children's Trust Fund were produced by James Aronson, a co-trustee thereof for the entire period of its operation (until June 20, 1968) and they do not indicate one penny of income from Death House Letters, other than as dividends from Jero Publishing Company, Inc. for the years above set forth. Those statements will be made available to the Court in the event plaintiffs take issue with this fact.

16. Thus, the financial records * of plaintiffs' alleged predecessors in interest establish conclusively: 1) that Death House Letters never earned substantial sums, 2) that no sales of Death House Letters have taken place since at least June 30, 1956, nearly seventeen years prior to the publication of The Implosion Conspiracy. Consequently, it

*** Marked as Exhibit 31 on the deposition of James Aronson, p. 200).

* These records were not before the Court in 1973, at the time of the motion for a temporary injunction.

cannot be contended that the availability of The Implosion Conspiracy reduced the demand for Death House Letters.

The Defense of Fair Use Is Available Where the Copyrighted Material Consists of Letters

17. In July 1973 this Court observed that defendants were likely to "prove fair use of the letters in question." 361 F. Supp. at 1068. Yet, it denied defendants' cross-motion to dismiss Count I of the complaint "without prejudice to renewal thereof upon an expanded record", (Id. at 1070), because of its uncertainty as to the conclusiveness of the fair use defense in the instant case in two respects. The first was whether "letters stand on the same footing as 'historical facts' which are the product of research and in turn form the basis for subsequent works and the second was whether knowledge "of the potential copyright infringement" on defendants' part had some bearing on the application of the defense.* Id. at 1070. Extensive research as to primary sources used in biographical and historical works compels the conclusion that letters do stand on the same footing as other "historical facts".

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* Since the answer to this second question involves no presentation of facts, it is set forth in Point I (d) of the accompanying memorandum of law.

18. In the leading case of Rosemont Enterprises, Inc. v. Random House, Inc., 366 F. 2d 303, 307 n. 4 (2d Cir. 1966), cert. denied, 385 U.S. 1009, the Court of Appeals held that the doctrine of "fair use" permitted biographies to "quote directly" from earlier books on the same subject and stated:

> "As one noted authority has stated, 'The world goes ahead because each of us builds on the work of our predecessors. 'A dwarf standing on the shoulders of a giant can see farther than the giant himself." Progress would be stifled if an author had a complete monopoly on everything in his book * * *"' Chafee, Reflections on the Law of Copyright, 45 Colum. L. Rev. 503, 511 (1945). See, for example, the extensive sources listed by Albert J. Beveridge in The Life of John Marshall (4 vols) (1919) and Eugene C. Gerhart in America's Advocate: Robert H. Jackson (1958)." (emphasis added)

19. The two biographical works cited as exemplars in the Rosemont case do in fact rely heavily upon letters to or from the principals involved to substantiate the author's conclusions. Thus, for example, in Beveridge's biography of John Marshall, he quotes from letters from Marshall to President George Washington (Ex. 5 annexed), from Marshall to his wife (Ex. 6 annexed), from Marshall to Pickering and Pickering to Marshall (Exs. 7 and 8 annexed), from Jefferson to Gallatin and to Crawford (Ex. 9 annexed) and from Marshall to Story (Ex. 10 annexed).

20. Similarly, in Gerhart's biography of Robert Jackson, the author relies heavily upon letters to support and illustrate his theses. For example, he quotes entire letters from President Roosevelt to Jackson and from Jackson to the President (Exs. 11, 12 and 13 annexed), and from Harlan Stone to Jackson and his response thereto (Ex. 14 annexed).

21. The reference to these two famous biographies by the Court of Appeals in Rosemont is in precise accord with the views of leading scholars concerning the value of letters as primary source material in history and biography. Thus, G. J. Renier in HISTORY: ITS PURPOSE AND METHOD (BOSTON: Beacon Press, 1950) stated:

> "The material out of which the historian must compose his story consists of events. How, where is he to find them? They happened in the past, they have disappeared with it. No profound philosophy is needed to justify the assertion that the historian cannot have direct knowledge of past events. But he may assume that they have had some effect, that they have left 'relics' behind them, as Collingwood says, or 'traces,'" (pp. 96-97)
>
> "To be acquainted with a trace brings us nearer the event by which it was left: the historian in search of events that have gone will look for traces that are still there." (pp. 96-97)
>
> "A general appellation for written traces, suggested by the fact that they teach us something, is 'documents' . . ." (pp. 103-04)

> "Among the documents that are not records are those of a personal nature, like diaries, memoirs and letters . . . Letters are the trace of the desire experienced by the letter writer to achieve an end, to carry persuasions . . ." (pp. 103-04) (emphasis added)

21. Similarly, Edward Channing, Albert Bushnell Hart, and Frederick Jackson Turner, in their GUIDE TO THE STUDY OF AMERICAN HISTORY (New York: Ginn and Co., 1912), a syllabus of American history designed to guide teachers, list on page 163 as primary source materials, inter alia, published collections of writings, speeches, letters and journals of persons such as John Adams, Samuel Adams, John Calhoun, Charles Carroll, Rufus Choate, Daniel Dickenson, Alexander Hamilton, Thomas Hutchinson, Thomas Jefferson, James Madison, John Motley, Wendell Phillips, George Washington and John Winthrop.

22. In his introduction to the SOURCE BOOK OF AMERICAN HISTORY (New York: Macmillan, 1899), Albert Bushnell Hart discusses various primary sources available to the student, including published collections of letters and those in manuscript. Again in AMERICAN HISTORY TOLD BY CONTEMPORARIES (New York: Macmillan, 1924), Professor Hart tells us in his preface that

> ". . . valuable extracts have been taken from the journals, private letters, and reminiscences of those who had knowledge of public affairs. While less formal than the public records, or the careful state papers and official correspondence and arguments

> of the statesmen mentioned above, they have the value of unstudied testimony, and they cause an impression of the human side of the history."

Among the sources he lists for further exploration are the correspondence of Marquis Cornwallis, Silas Deane, John Jay, William Pitt, Gouvernor Morris, Thomas Hutchinson, William Bradford and the Familiar Letters of John and Abigail Adams.

23. Oscar Handlin, et al., in HARVARD GUIDE TO AMERICAN HISTORY (Cambridge, MA: The Belknap Press) lists over 350 collections of letters in the section on historical sources (p. 184 et seq.). In commenting thereon, the authors state:

> "Personal records are indispensable to the historian. They offer valuable information about the development of events and they serve as stimulating reminders of the role of the individual in history. American historiography is rich in autobiographies, diaries, memoirs, collected writings and letters . . ." (p. 177)

24. Apart from these pertinent comments of scholars, literature is replete with innumerable historical and biographical works dependent upon letters as source material. As but a few illustrations thereof, I have annexed sample pages from each of the following books:

(a) Leonard Baker, JOHN MARSHALL: A LIFE IN LAW (New York: Macmillan, 1974). (Ex. 15)

(b) Jonathan Messerli, HORACE MANN: A BIOGRAPHY (New York: Knopf, 1972). (Ex. 16)

(c) Winston S. Churchill, MARLBOROUGH, HIS LIFE AND TIMES (New York: Scribners, 1968). (Ex. 17)

(d) Sybille Bedford, ALDOUS HUXLEY (New York: Knopf, 1974). (Ex. 18)

(e) Fawn Brodie, THOMAS JEFFERSON, AN INTIMATE PORTRAIT (New York: Norton, 1974). (Ex. 19)

(f) Quentin Bell, VIRGINIA WOOLF. (New York: Harcourt, Brace, 1974). (Ex. 20)

(g) Justin Kaplan, MR. CLEMENS AND MARK TWAIN (New York: Simon and Schuster, 1966). (Ex. 21)

(h) Leon Edel, HENRY JAMES (New York: Lippincott, 1962). (Ex. 22)

(i) Burton J. Hendricks, THE LIFE OF ANDREW CARNEGIE (New York: Harper Bros., 1932). (Ex. 23)

(j) Stephen Shadegg, CLARE BOOTHE LUCE: A BIOGRAPHY (New York: Simon and Schuster, 1972). (Ex. 24)

(k) John F. Kennedy, PROFILES IN COURAGE (New York: Harper & Row, 1955). (Ex. 25)

(l) E. B. Long, THE CIVIL WAR, DAY BY DAY (New York: Doubleday, 1971). (Ex. 26)

(m) Albert Bushnell Hart, AMERICAN HISTORY TOLD BY CONTEMPORARIES (New York: Macmillan, 1924) (Ex. 27)

(n) James Ford Rhodes, HISTORY OF THE UNITED STATES (New York: Macmillan, 1919) (Ex. 28)

(o) 7 Francis Parkman, FRANCE AND ENGLAND IN NORTH AMERICA, part 7, MONTCALM AND WOLFF. (Ex. 29)

(p) Thomas James, HISTORY OF NEW YORK DURING THE REVOLUTIONARY WAR (New York: Historical Society, 1879). (Ex. 30)

(q) Mark deWoolf Howe, JUSTICE OLIVER WENDELL HOLMES. (Ex. 31)

25. Since letters do stand on the same footing as other primary sources as "historical facts", the protection of the fair use defense must be equally available to authors who quote from letters in their biographical or historical works.

Count III, Based Upon Alleged Damage to Unpublished Letters Must Also Be Dismissed

26. Count III is alleged in paragraphs 29 to 31 of the complaint and paragraphs 49 to 51 of the supplemental complaint. Paragraph 29 of the complaint (49 of the supplemental complaint) repeats and realleges the entire first and second counts of the complaint. In paragraph 30 (50 of the supplemental complaint), plaintiffs allege that they are the sole owners of writings and correspondence of their parents which "have not heretofore been published", and that they intend to publish and copyright those writings. Paragraph 31 (51 of the supplemental complaint) alleges that by publishing The Implosion Conspiracy, defendants have damaged those hitherto unpublished letters to the extent of $1,000,000.

27. Clearly, Count III fails to state a claim for relief. It does not state a claim for common law copyright infringement since plaintiffs do not claim that the unpublished writings* were used in The Implosion Conspiracy. It does not state a claim for infringement of a statutory copyright, since these letters were never published under a claim of copyright. Indeed, I have never even seen those writings. Count III appears to be merely a claim for further damage for the alleged wrongs in Counts I and II. However, Count II has already been dismissed and, if the Court agrees that the defense of fair use is established as a matter of law, Count I will be dismissed as well. Consequently, Count III becomes reduced to a claim for damage based upon conduct which is in no way wrongful.

28. Moreover, plaintiffs could not possibly have any damage under the alleged wrong asserted in Count III. This Court's observation that there is no evidence that The Implosion Conspiracy reduced the demand for letters which have been out of publication for nearly twenty years applies a fortiori to letters which have never been published. Indeed, the Court's previous statement with respect to the published letters:

> "[T]he only realistic inferences are to the contrary - i.e., that the defendants' book probably has been the only significant event that might enhance their value." (361 F. Supp. at 1070)

* These writings are identified in paragraph 17 of the Further Answers to Interrogatories and Amended Interrogatories.

applies equally to the unpublished writings.

29. Subsequent events have borne out the accuracy of this statement. Those writings have remained unpublished for more than twenty years. Only after the publication of The Implosion Conspiracy, have the plaintiffs, upon information and belief, recently entered into an agreement with Houghton-Mifflin Company for the publication of some or all of the writings which are the subject of Count III, in a book entitled We Are Your Children. Said publication is actually scheduled for April, 1975. This fact alone completely destroys the speculation that The Implosion Conspiracy in any way damaged the unpublished writings.

The Prior Dismissal of Count II of the Compaint Requires Dismissal of Count II of the Supplemental Complaint

30. As stated earlier, Count II of the complaint against Doubleday and me has already been dismissed by order and opinion of the Court dated July 31, 1974. 381 F. Supp. 29. The dismissal was based on the Court's conclusions that The Implosion Conspiracy neither libeled plaintiffs nor invaded their privacy as a matter of law and alternatively, that defendants were privileged in their actions by the First Amendment. These conclusions are equally applicable to Fawcett which merely reprinted the soft cover edition of The Implosion Conspiracy.*

* Plaintiffs in their supplemental complaint, have, by the addition of some colorful language attempted to overcome some of the findings in this Court's said opinion of July 31, 1974. However, no amount of artful pleading can change the fact that

The Implosion Conspiracy, as this Court has already held, neither libels the plaintiffs, nor invades their privacy. For the same reason, to the extent that plaintiffs seek to address this Count to Doubleday and me, it is also defective. Moreover, this Court's said order of July 31, 1974 granting partial summary judgment, dismissed identical claims on the merits and, consequently, without leave to replead.

Consequently, Count II of the supplemental complaint must also be dismissed.

Summary judgment should therefore be entered dismissing the First and Third Counts of the complaint and the First, Second and Third Counts of the supplemental complaint.

Louis Nizer

LOUIS NIZER

Sworn to before me this
29th day of January, 1975.

Alida Repetti

ALIDA REPETTI
Notary Public, State of New York
No. 01R-4620235
Qualified in Bronx County
Cert. filed in New York County
Commission Expires March 30, 1976

AFFIDAVIT OF ROBERT M. CALLAGY
IN SUPPORT OF MOTION SWORN TO JANUARY 29, 1975

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -x

MICHAEL MEEROPOL and ROBERT MEEROPOL, :

Plaintiffs, :

-against- : 73 Civ. 2720

LOUIS NIZER, DOUBLEDAY & COMPANY, INC. and FAWCETT PUBLICATIONS, INC., : (HRT)

Defendants. : AFFIDAVIT

- -x

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

ROBERT M. CALLAGY, being duly sworn, deposes and says:

1. I am a member of the firm of Satterlee & Stephens, attorneys for defendants, Doubleday & Company, Inc. and Fawcett Publications, Inc. I submit this affidavit in support of defendants' request that in the event summary judgment is granted herein that the judgment entered include a provision permanently enjoining the plaintiffs from instituting in this country any new action for copyright infringement, libel, invasion of privacy or damage to unpublished writings (the subject matter of the instant complaint and supplemental complaint) based upon any reprint of The Implosion Conspiracy anywhere in the world.

2. While at first blush, such a provision would appear to be unnecessary in view of the fact that if summary judgment were granted, the doctrines of res judicata and collateral estoppel would be a complete defense to any future actions insti-

tuted by plaintiffs based upon reprint of The Implosion Conspiracy, it has become obvious that the mere certainty of defeat will not deter plaintiffs from commencing new actions.*

3. At a continued deposition of Doubleday, plaintiffs requested copies of all agreements Doubleday had entered into covering reprint rights to The Implosion Conspiracy. On January 13, 1975, copies of the agreements covering domestic reprinting were furnished to counsel for the plaintiffs and additional copies thereof are annexed hereto as exhibits. In each of those agreements, Doubleday has agreed to indemnify the licensee.

4. During oral argument in the Court of Appeals for the Second Circuit on January 7, 1975**, plaintiffs' attorney stated his intention to commence litigation against the licensees of reprints of The Implosion Conspiracy. As a result of the aforesaid indemnification provisions, defendant Doubleday would be the real party in interest as it was in the Fawcett action in Connecticut. (Meeropol v. Nizer, F.2d (2nd Cir. 1974), Docket No. 74-1587.)

5. An injunction against future litigation with respect to The Implosion Conspiracy is necessary both in the

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* For example, after this Court denied a preliminary injunction against the continued publication of the hardcover or paperback edition, and plaintiffs filed and then withdrew their appeal therefrom, plaintiffs instituted a new action in the State of Connecticut against Fawcett, the publisher of the paperback edition, and once again sought a preliminary injunction. This Court is all too familiar with plaintiffs' actions in resisting defendants' attempt to stay that action.

** The argument was on a petition for a writ of mandamus, which petition was denied on January 9, 1975.

interest of judicial economy and to protect defendants against vexatious litigation. On the other hand, plaintiffs cannot be prejudiced since they have had their day in court on the merits. As demonstrated in POINT V of the accompanying memorandum of law, this Court has the power to issue such an injunction.

Under the circumstances, I respectfully request that the judgment to be entered herein also enjoin plaintiffs from instituting future actions in the United States against any licensee of the reprint rights to The Implosion Conspiracy.

Robert M. Callagy

Sworn to before me this
29th day of January, 1975.

Alida Repetti
Notary Public

ALIDA REPETTI
Notary Public, State of New York
No. 01RE4600235
Qualified in Bronx County
Cert. filed in New York County
Commission Expires March 30, 1976

PLAINTIFF'S NOTICE OF MOTION DATED FEBRUARY 13, 1975 FOR AN ORDER ADJOURNING RETURN DATE OF MOTIONS FOR A SUMMARY JUDGMENT, ETC.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MICHAEL MEEROPOL and ROBERT MEEROPOL,	:	
Plaintiffs,	:	73 Civ. 2720
-against-	:	(HRT)
LOUIS NIZER, DOUBLEDAY & COMPANY, INC. and FAWCETT PUBLICATIONS, INC.,	:	NOTICE OF MOTION
Defendants.	:	

S I R S :

PLEASE TAKE NOTICE that upon the affidavit of Marshall Perlin, sworn to the 13th day of February, 1975, and upon the proceedings heretofore had, the undersigned will move this Court on February 21, 1975 in Room 1506 at the United States Courthouse, Foley Square, at 2:15 P.M. or as soon thereafter as counsel can be heard, for an order adjourning the return date of the motions for summary judgment and other relief made by the defendants herein to May 15, 1975 and for such other and further relief as this Court may seem necessary and proper in the premises.

Dated: New York, New York
February 13, 1975

MARSHALL PERLIN
Attorney for Plaintiffs
Office & P.O. Address
36 West 44th Street
New York, New York 10036
(212) 661-1886

TO:

PHILLIPS, NIZER, BENJAMIN, KRIM
& BALLON, Esqs.
Attorneys for Defendant Louis Nizer
40 West 47th Street
New York, New York 10019
(212) 977-9700

SATTERLEE & STEPHENS, Esqs.
Attorneys for Defendants Doubleday &
Company, Inc. and Fawcett
Publications, Inc.
277 Park Avenue
New York, New York 10017
(212) 826-6200

AFFIDAVIT OF MARSHALL PERLIN
IN SUPPORT OF MOTION SWORN TO FEBRUARY 13, 1975

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MICHAEL MEEROPOL and ROBERT MEEROPOL,

Plaintiffs,

-against-

LOUIS NIZER, DOUBELDAY & COMPANY, INC. and FAWCETT PUBLICATIONS, INC.,

Defendants.

73 Civ. 2720 (HRT)

AFFIDAVIT

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

MARSHALL PERLIN, being duly sworn, deposes and says:

1. I submit this affidavit in support of plaintiffs' motion for an order adjourning the return of the motion of the defendants LOUIS NIZER, DOUBELDAY & COMPANY, INC. and FAWCETT PUBLICATIONS, INC. for summary judgment dismissing Counts I and III of the complaint and the supplemental complaint and Count II of the supplemental complaint to May 15, 1975.

2. The supplemental complaint was served upon all of the defendants on January 15, 1975. Fawcett served its answer on January 31, 1975. Neither Nizer nor

Doubleday has answered the supplemental complaint.

3. The defendants' motions to dismiss Count I of the complaint are premised primarily on the defense of "fair use." Defendants moved to dismiss Count III of both complaints in part on the ground that Counts I and III are interdependent and one cannot stand without the other; and that in any event the claimed damages under Count III are too speculative.

4. Defendants moved to dismiss Count II of the supplemental complaint on the grounds that this Court's disposition of Count II of the original complaint disposes of that count of the supplemental complaint, notwithstanding the different allegations in the two complaints.

5. The defendants had previously moved to dismiss Count I of the original complaint when this matter first came before this Court in July, 1973. Inter alia, in denying the motion, this Court stated:

> "But 'fair use' would seem to be a function of all of the circumstances and plaintiffs should have the opportunity to rebut the presumption that arises from the nature of the materials and the circumstances described herein."

In denying the motion, the Court stated that it was "without prejudice to a renewal thereof upon an expanded record."

6. The "expanded record" of the "circumstances" is the rationale of the current motions directed to those counts.

7. The defendants claim that upon the "expanded record" facts that defendants obtained in the course of discovery permit them to once again move to dismiss Count I of both complaints.

8. In support of their motion, the defendants submit voluminous papers, with 34 exhibits, part of which are factual material obtained in discovery and the remainder exhibits from other sources in support of the "rebuttable presumption" of "fair use" and its application to the present factual circumstances thus raising disputed issues of both a factual as well as legal nature. Expert opinions of historians are cited as well in the affidavits and memorandum.

9. The motions for summary judgment include an application for a permanent injunction preventing plaintiffs from bringing any other or future action against any licensee publishing THE IMPLOSION CONSPIRACY. These motions were served upon the plaintiffs at 5:50 P.M. on January 31, 1975. Defendants at that time acknowledged that the scope and nature of the motions and substantiating data in support thereof were such that it would undoubtedly require additional time for the plaintiffs to respond thereto notwithstanding the return date of February 14, 1975.

10. Without conceding any merit to the defend-

ants' motions, undoubtedly these motions constitute defendants' major attempt, long worked on and researched, to dispose of this action without a trial, and defendants' prime motivation for seeking to frustrate plaintiffs' discovery.* For that reason, it is the plaintiffs' intention to be in a position to fully respond by affidavits and otherwise to defendants' motions and have the benefit of discovery to which they are entitled.

11. The defendants in their papers cite opinions of experts and examples of alleged similar books to support their contention that under the doctrine of "fair use" they have a complete defense to the action. They argue that the nature of the material infringed upon, the letters of Julius and Ethel Rosenberg, and the nature, content and quality of the infringing work, THE IMPLOSION CONSPIRACY, is such that plaintiffs cannot produce any facts or "circumstances" to rebut their defense.

12. The defendants seek to establish both from material obtained through discovery and otherwise that no significant damage could have been done to the

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* It would seem that whenever faced with the reality of depositions--after delays on their part--defendants' motions for summary relief and staying of depositions and other discovery is the basic response. The first motion for summary judgment was served within a day of the initial deposition of Nizer on January 29, 1974.

copyrighted property because there had never been any substantial demand for the copyrighted work or any significant sales, income or profit either now or in the past. Thus, defendants argue, fair use permits them to infringe, and plaintiffs are not entitled to copyright protection or recovery of money damages.

13. Further, the defendants contend in their papers that their infringements, now or in the future, do not compete with, or derogate the value of, the copyrighted material--notwithstanding their argument that the letters are an essential ingredient of THE IMPLOSION CONSPIRACY and in promoting its sale. Defendants finally argue that since plaintiffs have written a book which contains certain letters of Ethel and Julius Rosenberg this proves the absence of damages and lack of competition with the copyrighted material, statutory or common law.

14. In substantial part, the defendants base their motions for summary judgment on their claim that THE IMPLOSION CONSPIRACY is an accurate, well-documented, scholarly, legal, historical and biographical work which has contributed to the accumulation of knowledge about a well known case and the parties involved, and that it adds new or previously undisclosed facts about the subject matter.

15. Plaintiffs wish to present substantial factual affidavits in response to these contentions which will require that the motions be denied and that a full and fair trial be granted.

16. Plaintiffs are now in the process of collecting, reading and checking the approximately twenty volumes of books cited by the defendants in support of their arguments; plaintiffs are amassing other works of major importance and repute in reply thereto. This requires a great expenditure of time in researching this material as well as collating and excerpting them in such form as to be presented in sharp response to defendants' contentions.

17. In addition, plaintiffs are in the process of communicating with various persons, experts in the field, some who they anticipate producing at the trial, to obtain affidavits therefrom directed to the matters put into issue. There are witnesses who are in a position to present fact affidavits, having particular and unique knowledge of certain of the facts which should be presented to this Court in considering defendants' motions and that meet the contentions of the defendants.

18. The obtaining of the necessary affidavits from numerous persons having either unique knowledge of the facts or expressing expert opinions particularly appropriate

to the nature of the material and "circumstances" constitutes a most time-consuming process. This is particularly so when many of the persons reside either out of state or country.

19. In addition to getting affidavits from certain of the former trustees of the Rosenberg Children's Trust Fund, plaintiffs hope to obtain affidavits from others who have researched and written about the case. This includes some of the authors whom the defendants "acknowledge" in THE IMPLOSION CONSPIRACY as well as former members of the Committee to Secure Justice for Ethel and Julius Rosenberg, some named in the defendants' book. Affidavits will be sought from Morton Sobell, who was tried with the Rosenbergs; from persons who had personal knowledge of the case and who sought to tender accurate factual information prior to publication of the book but whose tenders were rejected without consideration by the defendants and their agents.

20. It is expected, provided time is afforded by this Court, that affidavits will also be presented by persons who have knowledge about the sale, promotion and distribution of the DEATH HOUSE LETTERS in the United States and in other countries throughout the world.

21. The obtaining of the above affidavits from persons in and out of this jurisdiction will in certain instances require more than mere telephonic and postal com-

munication with persons on the part of counsel.

22. Plaintiffs' discovery has been an arduous task in light of the defendants' resort to all means to frustrate and delay it. By a variety of means defendants seek to deny plaintiffs initial testimony and documents needed both to respond to their present motions and for trial.

23. Immediately after the decision of the Court of Appeals, on October 26, 1974, the plaintiffs noticed depositions or continued depositions of the parties defendant; November 13, 1974 (Nizer); December 2, 1974 (Fawcett); December 16, 1974 (McCormick). At the time I sought to arrange with defendants for the taking of the deposition of Otto Preminger, who worked intimately with the author and provided material for the writing of the book.

24. The defendants delayed so that the continued examination of McCormick did not commence until the afternoon of December 31, 1974; at the time of the adjournment Mr. McCormick indicated that he would be available the following week and plaintiffs were promised certain files and records. While I renoticed the continued examination, Doubleday's counsel refuses to produce the witness and has not come close to producing all of the files

requested, and indeed promised.*

25. The Nizer deposition was delayed by his counsel until the afternoon of January 31, 1975. At its adjournment at 5:50 P.M., plaintiffs were advised that Nizer would not appear at a continued examination. I re-noticed the deposition but Nizer is not being produced by the defendants. Similarly, Fawcett has refused to appear for its examination. Since the Preminger deposition is essential now in light of the pending motions, it was necessary for me, in order to insure his testimony, to notice a deposition and to subpoena Mr. Preminger. The witness has been subpoenaed and the deposition has been set down for February 20, 1975 at 10:30 A.M. (The scheduling of Mr. Preminger's deposition was also delayed by his absence from the state and country a goodly portion of the time.)

26. In October 1973, plaintiffs served notices for the production of documents upon the defendants. The defendants belatedly agreed to comply with certain of the requests and refused others. It has been only as a result of depositions that the plaintiffs have been able to widen to some limited degree the examination of certain documents. The existence of certain relevant documents has

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* Certain files, it seems, were "lost" since the prior deposition of McCormick in February, 1974.

been denied by silence or otherwise but they have inadvertently surfaced from time to time. The first meaningful but incomplete examination of documents of Doubleday did not take place until February 6, 1975. They have yet to produce copies of those examined documents where requested by plaintiffs and agreed to by defendants. It is only within the past three weeks and through recent depositions that plaintiffs learned of the existence of other relevant documents which the defendants nevertheless have refused to produce. They have agreed to itemize and identify the documents they are refusing to produce so that I might be in a position to move with respect thereto. I have yet to receive those lists.

27. Nizer has within his possession tapes of two interviews: one with Gloria Josephson, Bud Rosenthal, Otto Preminger and Nizer; the other between Josephson, Preminger and another person. We have asked for transcripts of these tapes. Even defendants would acknowledge their relevance. No transcripts have been produced by defendants. Only this week have arrangements been made so that plaintiffs will be enabled to transcribe the tapes.

28. In the course of the depositions of Nizer and McCormick, the witnesses were directed not to answer many questions which were germane and directly rele-

vant and material to Counts I and III of the complaints.

29. These questions relating to discovery, both testimony and documents, require resolution. I am preparing and I will be serving a motion directed thereto for determination by this Court. All are relevant and material to Counts I and III of the complaint.

30. Even if it were not for the time entailed in conducting further depositions, obtaining ruling on discovery and examining documents now available or which may become available, the adjournment requested by this motion would still be necessary. The inquiry preparation and collecting of the requisite affidavits of the kind referred to in this affidavit, the amassing of pertinent historical, literary and research authority and texts, as well as the legal research on all the legal issues involved, require an adjournment of the motions for summary judgment to a date no earlier than May 15, 1975.

31. At the return of the motion I shall be advising the Court of my other engagements which of necessity is another factor requiring an adjournment of the motions and granting the application I am making in behalf of the plaintiffs.

WHEREFORE, it is respectfully prayed that plaintiffs' motion be granted and the return date of said motions for summary judgment be adjourned to May 15, 1975, together

with such other and further relief as to the Court may seem necessary and proper in the premises.

MARSHALL PERLIN

Sworn to before me this

13th day of February, 1975.

ISADORE NATHANSON
Notary Public, State of New York
No. 24 2[illegible]30
Qualified in Kings County
Commission Expires March 30, 19

AFFIDAVIT OF MARSHALL PERLIN IN OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT, ETC., SWORN TO APRIL 23, 1975

UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF NEW YORK

MICHAEL MEEROPOL and ROBERT MEEROPOL, : 73 Civ. 2720 (MP)

Plaintiffs, :

-against- : AFFIDAVIT

LOUIS NIZER, DOUBLEDAY & COMPANY, INC. and FAWCETT PUBLICATIONS, INC., :

Defendants. :

STATE OF NEW YORK)
)ss.:
COUNTY OF NEW YORK)

MARSHALL PERLIN, being duly sworn, deposes and says:

1. I am the attorney for the plaintiffs and submit this affidavit along with the other documents attached hereto or incorporated by reference in opposition to the Nizer, Doubleday and Fawcett motion for summary judgment for an order dismissing counts I and II of both the original and supplementary complaint. The original complaint

was filed in June, 1973 against Nizer and Doubleday. The supplementary complaint was served and filed on January 15, 1975 naming Nizer, Doubleday and Fawcett as parties defendants.

2. At the time the action was brought, plaintiffs moved for a temporary injunction and defendants cross-moved to dismiss count I of the complaint. The motion for a temporary injunction was denied as was the defendants' cross-motion to dismiss count I on various grounds, primarily on the defense of fair use. Plaintiffs' motion for a temporary injunction as well as the defendants' motion for summary judgment dismissing the first count of the complaint were denied by Judge Tyler in an opinion and order dated July 18, 1973. The Court, in denying defendants' motion for summary judgment, stated as follows:

> "In their papers opposing plaintiffs' motion defendants have suggested and indeed urged that the record is sufficient for this Court to dismiss the first claim on this ground. But 'fair use' would seem to be a function of all of the circumstances, and the plaintiffs should have the opportunity to rebut the presumption that arises from the nature of the materials and the circumstances described herein. It is not altogether clear that letters stand on the same footing as 'historical facts', which are the product of research and in turn form the basis for subsequent works."

After alluding to the fact that Doubleday published another book on the Rosenberg case, INVITATION TO AN INQUEST, which included excerpts of Rosenberg letters, did so only upon authorized written consent, stated that "defendants' motion to dismiss the first count is denied without prejudice ... to renewal thereafter on an expanded record".

3. The defendants' present motion is directed to the dismissal of the first count of both complaints, which in turn defendants argue if granted automatically defeats the third count of both complaints. The entire defense upon which the defendants rely and upon which they assert their present motion for summary judgment is the defense of "fair use".

4. Since defendants' motion relies entirely on their claim of "fair use", they accept certain premises, at least for the purpose of the instant motion, so that the "fair use" issue can be posed before this Court, and in effect that issue alone. For the purposes of this motion it is conceded by the defendants: (a) plaintiffs are owners of a copyright to a book and its contents entitled DEATH HOUSE LETTERS OF ETHEL AND JULIUS ROSENBERG, a book consisting of letters written by Ethel and Julius Rosenberg from the time of their arrest to March 19, 1953; (b) the

copyright is a valid copyright remaining in full force and effect and enforceable in the courts of the United States; (c) the defendants, without permission or consent of the copyright owners, wrote and published a book entitled THE IMPLOSION CONSPIRACY, which contains verbatim copies extracts of the plaintiffs' copyrighted material; and (d) the defendants state that the total number of words copied verbatim from the copyrighted material total 1,957 words from a book they claim has approximately 81,000 words while the infringing work totals approximately 229,000 words.

5. The expanded record upon which the defendants rely consists of the following: (a) portions of the financial records of Jero Publishing Company from the period April, 1953 through June 30, 1956 (annual financial statements), which they argue establish that the copyrighted publication DEATH HOUSE LETTERS never earned substantial sums and that no sales had taken place since 1956, and hence the publication of the infringing book did not reduce the demand for DEATH HOUSE LETTERS; and (b) letters "stand on the same footing as other primary sources as 'historical facts'" and hence in the face of a fair use defense are not entitled to copyright protection.

6. It is upon these premises and the "expanded

record" that the defendants remove to dismiss count I of both complaints on the claimed defense of "fair use". We will address ourselves to (1) the nature of the copyrighted material; and (2) the nature of the infringing work and its use of the copyrighted material therein.

The Copyrighted Property

7. The DEATH HOUSE LETTERS consist of letters written by Julius and Ethel Rosenberg to each other, to their attorney Emanuel H. Bloch, and to their children, the plaintiffs in this action. The first of these letters is dated July 25, 1950; the last March 19, 1953. There were two printings in 1953. The copyrighted material was duly published with copyright nature again in 1954 under the title THE TESTAMENT OF ETHEL AND JULIUS ROSENBERG, which also included letters written after March 19, 1953 to the time of the authors death on June 19, 1953.

8. A reading of these letters, composed and written by two persons over a period of years awaiting execution in the Death House in Sing Sing Penetentiary, has emotional impact upon the reader in the language of the persons involved expressing a very moving narration of their feelings, attitudes and impressions while confronted with a death sentence and the power, authority and weight

of the State arrayed against them. These letters represent writings of high literary quality.

9. The literary quality and the uniqueness of the writings has been acknowledged by the author of the infringing work itself, Nizer. In speaking at a gathering in Washington, D.C. in June of 1972 to promote the sale of his book, he stated:

> "The love letters she wrote were published while she was in jail. They were moving documents. Somehow or other people who face death become very eloquent. Sacco Vanzetti and others, even when they were illiterate, and Ethel Rosenberg was by no means illiterate ... she was a cultured lady and so her letters were extremely moving."

In the material used by the defendants to promote the sale of the book, material that was prepared both by Nizer and Doubleday, repeated reference is made to the letters of the Rosenbergs. The promotional material refers to the "profound love between Ethel and Julius - as expressed in their death row correspondence ...". In the dust jacket of the book itself, composed by Nizer and Doubleday, the defendants state:

> "The emotional content of the story is at times almost overwhelming, the love story of Ethel and Julius that endure through waives of hope and despair, and expressed in love letters between them while in the death house;"

10. In a letter to Doubleday dated December 21, 1972, wherein Nizer urges that the publisher use his letter to promote the sale of the book, he states:

> "Yet for two years they lived in the Death House at Sing Sing separated by only thirty feet and unable to touch each other... I quote generously from them in the book, their eloquence, pain, devotion and lyrical pain would be worthy of a great poet."

and further

> "Also these letters are a window into their minds and hearts... I will not quote from all their letters here, the book does."

11. Attached hereto is an affidavit of John J. Simon, Senior Editor of McGraw Hill Book Company, previously Executive Editor of Modern Library and Vintage Books (Exhibit 1). Mr. Simon notes that letters are "an accepted and valued literary form". From reading the Rosenberg letters, he states "we can look at them both individually and as they have been collected, and find substantial literary value". There is "an exorable quality to them as the drama they describe builds to their tragic end". They "do approximate both in their structure and content the Aristotelian demands for dramatic tragedy". He finds they have a place in literary

history which cannot be denied them though the authors were the subjects of controversy and hostility at the time the letters were written.

12. This unpopularity, Mr. Simon notes, resulted in the writings not then receiving the sort of critical evaluation as literature which they warranted. He nevertheless notes that while their acceptance then did not reach critical acclaim in the United States, their letters did receive acknowledgment and praise from prominent literary and religious figures. He concludes:

> "However, by the most minimal definitions by which we agree as to what is within our literary heritage from the Bible to the works of Proust, Joyce, Yates, Elliot or Becket, for example, it is my view that the Death House Letters of Ethel and Julius Rosenberg have, at the very least, a valued and secure place."

13. In spite of the lack of American literary attention directed towards the DEATH HOUSE LETTERS, the writings that were appropriated by the defendants herein, at the time of their initial publication these letters were widely sold both in the United States and throughout the world. The data I set forth regarding the publication, sale and distribution of the book DEATH HOUSE LETTERS is upon information and belief. It has been difficult for

deponent to collect all of the pertinent records which would reveal the scope of the distribution and sale of these letters. From certain witnesses who will be available at the trial or whose testimony may be obtained by deposition further substantiating data in this regard will be obtained.

14. In the neighborhood of 100,000 copies were published, sold and distributed in the United States; approximately 125,000 copies were published and sold in Japan alone; thousands upon thousands of copies were sold in translated editions in France, Israel, Rumania, Italy, Hungary, Czechoslavkia, Poland, Germany, Finland, Belgium, as well as in England. The worldwide sale and distribution was, upon information and belief, in the neighborhood of 400,000 to 450,000 copies.

15. At the time of publication of the DEATH HOUSE LETTERS in June of 1953, as events transpired, the publication of the book was almost contemporaneous with the execution of the authors. Thereafter, the TESTAMENT edition was published in 1954. The copyright owners then intentionally withheld further printing after 1954 here in the United States since they had felt that a sufficient sum was then available in the trust fund established for the plaintiffs

to provide for their education and maintenance. They engaged in no further promotional activity and solely awaited the proceeds from sales in the United States as well as the net proceeds under royalty agreements from countries throughout the world, husbanding the plaintiffs' inheritance whose value would grow over the passing years and whose worth would be even more appreciated in the years to come. The trustees also sought by so doing to protect the plaintiff children from any further assaults and harassments by local authorities which they suffered in early 1954.

The Infringing Work

16. As acknowledged by Nizer in his book and as elicited in the course of the limited discovery, he was approached by Otto Preminger sometime in the Summer of 1971 to write a motion picture script about the Rosenberg case. Shortly thereafter, in the late summer or early fall of 1971, Nizer commenced his research and writing and had written a major portion of the motion picture script and completed it in January, 1972. After consultation with Preminger, he negotiated a contract with Doubleday in February, 1972 to write a book about the Rosenberg case, after having submitted his motion picture script to them.

17. He commenced writing the book in late Feb-

ruary or early March, 1972; completed the manuscript in August, 1972; received galley proofs in September or October, 1972; and the book was printed with a release date of February 9, 1973.

18. Preminger then concluded that the script required revision for dramatic use for television or cinema. To this end Preminger retained the services of three different script writers from March to October, 1972 resulting in three different scripts in May, September and October, 1972, all of which were presented to the world as the work of Nizer. As will be seen, portions of this script were incorporated into THE IMPLOSION CONSPIRACY.

19. The defendants base their defense of "fair use" on the ground that their book is a scholarly historically accurate study which represented such a contribution to knowledge of the Rosenberg case that they had the right to infringe on plaintiffs' copyright. Assuming the validity of their legal premise, the work at issue is so lacking in the attributes the defendants claim, that their defense must fail and their motion must be denied. The book contains blatant error in purporting to set forth the record of the trial. It provides not one iota of knowledge nor is a source of pertinent material about the case and is

in fact a confusing potpurri of writings extracted from secondary and tertiary sources compounded by many instances of fictitious writings held out as fact.

20. The defendants' book is the very antithesis of "a scholarly study built upon exhaustive research", even though Nizer in his introduction to his book makes that claim and representation to the reader.

21. Nizer states that prior to writing the movie and book script his knowledge of the Rosenberg case was remote and it was "a controversial abstraction" to him. But once he had concluded to write the script and book:

> "I was going to know as much about the Rosenbergs and the trial as was humanly possible to know, without having defended or prosecuted them.
>
> "I was not going to write a word until research had put me under their skins, the prosecutors', the defense counsels', the Judge's, the Appellate Judges', the witnesses'" (N.2)*

and

> "Writing about a trial involves the process of reincarnation in reverse. ... There is no place for fiction or even imaginative reconstruction. That is the path to a counterfeit presentation. Authenticity is the key."

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* N. refers to the page of THE IMPLOSION CONSPIRACY in its initial hard cover edition.

and further

> "The Rosenberg trial ... involved a succession of unexpected climaxes of which only the truth could be the author.
>
> * * *
>
> "... I spent my first writing vacation solely on research ... My object was to know every inch of the thousand pages of the record ... judicial opinions, as if I were going to write a critique for a law review; and every book I could find for or against the verdict, as if I were going to review each one for the Sunday Times ... and every person I could find who touched their lives or deaths, as if I were a reporter on a Pulitzer Prize mission.
>
> "Only when I had absorbed all this did I put pen to paper." (N.4)

22. Those representations were untrue.

23. The facts are:

(a) Those portions of the book purporting to cite or paraphrase the trial transcript contain numerous errors and misstatements and distortions and fail to note where in fact there are elisions or alterations by other means.

(b) Portions of the trial transcript ~~all~~ are inaccurately converted into dialogue and held out to the reader as verbatim reportage.

(c) Fictitious private conversations between the Rosenbergs and their attorneys and others.

(d) No attempts were made to obtain actual facts from persons having knowledge of the same associated with the case, i.e. judges, the prosecutors, the co-defendant, the jurors, or witnesses or government agents involved in the investigation and prosecution of the case.

(e) The author failed and refused to read INVITATION TO AN INQUEST by Walter and Miriam Schnier published by Doubleday and containing many newly discovered facts, some presented to the courts in behalf of the Rosenberg co-defendant Sobell and which qualified or impeached trial evidence on which the author held out as having been unchallenged.

(f) The book has no footnotes, no record references, no index, no bibliography, or any notation from which a reader could verify anything set forth in the book.

(g) Major portions of the book are either copied verbatim, paraphrased or excerpted, some in a distorted manner from other secondary sources.

The Author's Sources

24. The sources on the basis of which Nizer wrote THE IMPLOSION CONSPIRACY are as follows:

(a) The printed court record of the trial and appeal.

(b) THE JUDGMENT OF JULIUS AND ETHEL ROSENBERG by John Wexley, a book about the case published in June 1955, given to Nizer by Preminger.

(c) WAS JUSTICE DONE by Malcolm P. Sharp, published in 1956, given to Nizer by Preminger.

(d) THE BETRAYERS by Jonathan Root, published in 1963, given to Nizer by Preminger.

(e) THE ROSENBERG STORY by Virginia Gardner, published in 1954.

(f) IT'S ALL NEWS TO ME by Bob Considine (the author in a chapter of the book describes his observation as a press witness at the time of the execution).

(g) THE BOOK OF DANIEL by Edgar L. Doctorow, a work of fiction published in 1971.

(h) U.S. Law Week, issue of June 23, 1953, reporting the argument in the Supreme Court on June 18, 1953.

(i) Contemporaneous newspaper clippings from the New York Times and the Washington Evening Star at the time of trial and execution.

(j) The British edition of the DEATH HOUSE LETTERS entitled THE ROSENBERG LETTERS published by Dennis Dobson, given by Preminger to Nizer sometime after June 28, 1972.

25. Nizer, in addition to speaking to Bob Considine, an acquaintance of his, met with Gloria Agrin Josephson on June 28, 1972. Nizer spoke by telephone to Rabbi Irving Koslowe, the Prison Chaplain.

26. A reading of the sources given by Nizer indicates that his book rests almost exclusively on the trial record and THE JUDGMENT OF JULIUS AND ETHEL ROSENBERG, THE BETRAYERS, THE ROSENBERG SOTRY and THE ROSENBERG LETTERS,

with a smattering from WAS JUSTICE DONE and a major portion of his "psycho-history" from the work of fiction THE BOOK OF DANIEL.

27. It is important to note the inter-relationship of the three books on which Nizer primarily relied, the Wexley, Gardner and Root books. The Wexley book was published in 1955 after investigation, research and writing over a period of three years (see Wexley Affidavit of March 23, 1975). The Wexley book is 634 pages in length, is elaborately footnoted with record and other verifiable citations. It has a complete index and 22 appendices. In turn, the Root book was published in 1963. The author acknowledges from the trial record and other secondary sources including Wexley's book, and as later acknowledged Gardner's.

28. A reading and comparison of the Wexley and Root books makes apparent that Root heavily extracted and paraphrased large portions of the Wexley book, in many instances the Root version being briefer but its source apparent from the reading.

29. That major portions of THE IMPLOSION CONSPIRACY consist primarily of copying, extracting or paraphrasing from THE JUDGMENT OF JULIUS AND ETHEL ROSENBERG, THE ROSENBERG STORY

and THE BETRAYERS is fully substantiated from the testimony of Nizer in his deposition; from copies of the three books used by Nizer wherein he actually made handwritten notations; from notations in the handwritten and typewritten manuscripts of the motion picture and book; and by simply reading and comparing the books.

30. Exhibit 2 attached represents copies of the cover, title and initial pages from THE BETRAYERS with the handwritten notations of Nizer. The pages from which he extracted writings or information exceed the pages so noted or the pages of the text directly marked.*

31. Submitted with this affidavit is the affidavit of John Wexley, sworn to March 23, 1975, which has appended thereto the handwritten notations found on the flyleaf and title pages of Nizer's copy of THE JUDGMENT OF JULIUS AND ETHEL ROSENBERG as well as the marked pages of that book which would indicate the source of Nizer's careful basic research.

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* The following are marked pages of THE BETRAYERS only in part overlapping the page notations made by Nizer in the cover and title pages of the book: 16-27, 33-39, 41-43, 47, 53, 62-63, 65, 67-68, 70, 73, 75-76, 78-79, 84-86, 92, 99-100, 106-7, 117-118, 122, 124, 130-131, 141-142, 144, 156, 159, 173, 176-178, 180-188, 195, 198, 203, 214-215, 218-229, 231, 234, 236-244, 247, 253, 256-288, 290-293.

32. Exhibit 3 attached hereto is 26 pages of THE ROSENBERG STORY, which have the personal markings of Nizer

33. I set forth in Exhibit 4 attached hereto and made a part hereof the sources of the defendants' book with pagination from the other volumes from which they were obviously extracted. In many cases the comparison indicates the alteration, distortion or fictionalization in Nizer's book. Since Wexley and Root relied in part upon Gardner, Nizer, directly or indirectly, extracted from either Gardner, Root or Wexley, or combinations of the three.

34. An examination of pages of the handwritten manuscript of the book THE IMPLOSION CONSPIRACY ("Exhibit 4") in the deposition of Nizer reveals notations made by Nizer indicating the source of his "research". Other than record references these notations refer to portions of his previously written motion picture script with directions that they be copied or references to Wexley, Gardner and Root books and on some occasions the Sharp book.*

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* Pages 175-177, motion picture script; 193b Wexley, Root; 193c Root; 48, Wexley; Y-1, TV script and Wexley; 525-528 Gardner and Sharp; 759, motion picture script; 831, motion picture script; 912, Root; 932, Root; 938, Root; 941, Root; 946, Wexley; 949, Sharp; 952, motion picture script; 969, Wexley; 976, Root; 979, Root; 983, Root; 992, Root; 995, Root; 997, Root; 1,000, Root; 1,006, Root; 1,049, Root; 1,053 motion picture script; 1,056 Root; 1,075, motion picture script; 1,088, Root; 1,135, Root.

35. The Nizer handwritten motion picture script has similar handwritten notations on the side of the page indicating that the dialogue was, in substantial part, premised upon the Wexley, Root and Gardner books. Attached hereto are sample manuscript pages ("Exhibit 4").

36. While Nizer acknowledges an indebtedness to Rabbi Koslowe, I am advised by the plaintiffs who met and spoke with Rabbi Koslowe that the Rabbi did not meet with Mr. Nizer, his conversation was over the phone and the Rabbi invoked the privilege of confidentiality of any conversations he may have had with the Rosenbergs and was not a source of any information as to their personal attitude, behavior, or belief.

37. Nizer did meet with Gloria Agrin Josephson on June 28, 1972 at his offices, the meeting having been arranged at Mr. Nizer's request and at Preminger's suggestion. Present were Mrs. Josephson, Nizer, Preminger, and Preminger's assistant, one Bud Rosenthal. A tape recording was made with everybody's knowledge and consent of the conversation held at that time. Josephson is an attorney who was associated with Emanuel Bloch in his representation of the Rosenbergs. She did not personally know the Rosenbergs, never met them, and did not participate in the trial. She had

assumed the heavy burden for the legal research, the preparation of briefs and memoranda. The original tape recording is approximately one and a half hours in length, the original in the possession of Nizer. I have heard the tape recording. A major portion of it was focused upon the attorneys for the defense, and Josephson's response to questions about them, the trial tactics as well as the appellate process.

38. The defendants have not ever transcribed the entire tape or made any transcript available, stating that some portions of its are difficult to hear and indistinct. It would be quite difficult to transcribe. What is clear is that prior to that time Nizer had not seen or read THE DEATH HOUSE LETTERS or any excerpts of the letters except a few sent him by Preminger or from the Wexley or Root books. Nizer nevertheless rhapsodises about the literacy quality and lyricism of Ethel Rosenberg's writings. Josephson advised Nizer that the Rosenberg letters were published here in the United States and in other cour - around the world, its title and publisher were mentioned as well as the fact that more than one edition was published and that the proceeds were to be applied by a trust fund to aid the Rosenberg children. Nizer was anxious to obtain a

copy of these published letters and since Mrs. Josephson said that she only had one copy left, Preminger undertook and did obtain a copy of the British edition of THE DEATH HOUSE LETTERS entitled THE ROSENBERG LETTERS.

39. The June 28, 1972 meeting was held at Preminger's initiative. The book at that time more than three-fourths completed did not have any excerpts from the plaintiffs' copyrighted works. The manuscript for the book was completed and in galley form by October, 1972. Mrs. Josephson was sent a copy of the revised movie script but not the book. On November 3, 1972, Mrs. Josephson wrote a letter to Preminger ("Exhibit 5"). In that letter she warns of the ravages of "fictionalization" and then notes in the various fact errors in the script.

40. In paragraphs numbered 8 of her letter, she questioned the propriety as well as the truthfulness of a so-called "incident" between the Rosenbergs, said by Nizer to have occurred in the death house.

41. In the deposition held of Preminger on February 16, 1975, I referred to the Josephson letter (P. 222).* In response to questions as to

*P. Refers to the page of the transcript of the Preminger depositions.

whether or not the "sex scene" criticized by Josephson was true or not, Preminger replied:

> "I didn't know and I didn't care. This is a work of fiction. This is not a documentary. I didn't care what Mrs. Josephson said." (P. 222).

In response to a question as to whether Preminger were concerned in the accuracy or truth of the script, he replied "No. As I tried to explain to you, if you know what it means. It is not a documentary, it is a work of fiction. So it is not a question of being accurate. The accuracy is the creating of character, and the incidents don't have to be true and accurate in a script of fiction." (P. 224-22). Preminger stated he had the option to fictionalize and that "the whole script is fiction. I don't claim that it is documentary. I said it three times." (P. 226) And further "I don't claim that some of it might have occurred or not", and "In order to dramatize it, there were certainly some instances which were not exactly the way they occurred." (P. 227).

42. Referring to the "sex scene" Mr. Preminger acknowledged that, "Now, it could very well be that they controlled themselves and didn't touch each other in front of other people

or anything", but Preminger maintains for dramatic effect the script was nevertheless appropriate to dramatize. (P. 228). Preminger persisted in his belief that it was appropriate in the script to invent incidents or events so long as they were based "on the character" which was his test of proof. Preminger had testified in his first deposition that he and Nizer consulted frequently in the writing of the motion picture script and manuscript for the book. As Nizer sent portions of his manuscript bit by bit to Doubleday for their senior editor to read, evaluate, and comment, so simultaneously Preminger was receiving the book manuscript.

The Value of the Infringing Work

43. The infringing work is divided into two parts. One part is primarily focused upon what occurred in the courtroom and covers pages 25 to 363. The other part, pages 1 - 24 and pages 365 to 492, with the exception of some small portions thereof are primarily said to describe the Rosenbergs as well as events occurring outside the courtoom. It is in the latter portion of the book that one finds

plaintiffs' copyrighted material. Equally, the latter portion of the book is almost entirely derived from Wexley, Gardner and Root, except for certain new and fictitious writings created by Nizer and published by his co-defendants.

44. Wherever Nizer purports to set forth portions of the trial transcript, it is particulary composed and set forth on the printed page in an identifiable manner, from which a reader can assume that it is an official verbatim portion of the transcript. Official records are distinct from running commentary by the author or apparent summarization in the author's own words. Thus, pages 64 and 65 of the book purport to quote from the trial transcript and it is so laid out and identifiable. A contrived dialogue is similarly presented to the reader. Even where the transcript is set forth in question and answer form, in many instances it is incorrect and without any notations that there are elisions, deletions or alterations (see also Wexley affidavit).

45. Nizer first "converted" testimony to dialogue in the movie script, distorting the actual record. He then incorporated the dialogue in the book manuscript. The

result obviously misleads the reader (see Chomsky affidavit infra).

46. There are numerous examples in the infringing work where the defendants purport to be setting forth accurately and verbatim the trial transcript while, in fact, deletions or other alterations are made in the purported verbatim citation of the record which results in distorting the impact of what actually occurred in the trial. See for example: N. 60-61 & R. 277-278;* N. 65 & R. 252-253, 256-268; N. 70, 71 & R. 1167, 1168; N. 114, 115 & R. 549-556; N. 157-158 & R. 819-823; N. 204 & R. 1083; N. 206-207 & R. 1063-1067; N. 210 & R. 1080; N. 216-217 & R. 1137-1141; N. 224-225 & R. 1175; N. 227-229 & R. 1182-1186; N. 237 & R. 1269, 1271; N. 237-239 & R. 1278, 1280; N. 249 & R. 1317; N. 260 & R. 1346-1348; N. 263-264 & R. 1362-1364; N. 270-271 & R. 1377-1379; and N. 267, 271 & R. 1382-1383.

47. Examples of inaccurate and misleading conversion of testimony to dialogue can be found for example on the following pages of Nizer's book: 76-77, 79-80, 98, 104, 105, 106, 123, 126, 157-158, 161 and 165.

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* The N. refers to the page of THE IMPLOSION CONSPIRACY; R. refers to the page of the printed record of the Rosenberg-Sobell trial.

48. We refer to just a few of the obvious errors, easily ascertainable for accuracy, not related to the Rosenbergs or the plaintiffs to point up the utter lack of accuracy or scholarship tainted by fictionalization: Saypol is misdescribed as the prosecutor of Alger Hiss (N. 46); Nizer states that the Rosenberg committee published the trial record containing "the great secret" and it was "peddled across the globe". False. The trial transcript had none of the exhibits or"the great secret", the alleged drawing of the bomb, and its verbal description was impounded until 1966 (N. 86); Falsely reconstructs a visit by the FBI to the home of David Greenglass and adds a person not present to the fictional account (N. 101); Nizer has Yakovlev fleeing the country in 1950; in fact, he left in 1946 (N. 150); States that Gold was arrested by the FBI at the offices of one Brothman who was later convicted for espionage. Brothman's offices were in Queens. In fact, Gold was arrested in Philadelphia, not in New York, not in the office of Brothman, and Brothman was not convicted of espionage (N. 161).

49. I attach hereto affidavits of persons who have read THE IMPLOSION CONSPIRACY and were asked to give their expert opinion with regard to the value of the book as a

serious scholarly work; as a reasonably valuable source material for future historians, biographers and social scientists; and as a "product of considerable research and careful scholarly study." [11] (26) The affiants are as follows:

Richard Anderson Falk, Albert G. Milbank, Professor of International Law and Practice at Princeton University (Ex. 7);

Noam Chomsky, Ferrari P. Ward, Professor of Foreign Literatures and Linguistics at Massachusetts Institute of Technology (Ex. 8);

William A. Williams, Professional Historian and Professor of History at Ohio State University, University of Oregon, University of Wisconsin and Oregon State University (Ex. 9);

Lloyd C. Gardner, Professor of History at Rutgers University (Ex. 10);

Eugene D. Genovese, Chairman, Department of History at the University of Rochester (Ex. 11);

H. H. Wilson, Professor in the Department of Politics, Princeton University (Ex. 12);

Greg F. Herken, Historian at University of California, Santa Cruz with a doctorate in American Diplomacy and the Atom Bomb (Ex. 13);

David M. Oshinsky, American Historian at Rutgers University (Ex. 14);

Athan Theoharis, Associate Professor of American History, Marquette University (Ex. 15);

Norman T. Markowitz, Assistant Professor of History at Livingston College, Rutgers University (Ex. 16); and

Alvin H. Goldstein, Phd. and Senior Producer at the International Public Affairs Center for Television and the Producer of "The Unquiet Death of Julius and Ethel Rosenberg" (Ex. 17).

50. As stated by Dr. Falk, the infringing work "can lay no genuine or serious claim to being a work of scholarship"; it is a work "of no importance to scholars working on the subject matter it treats and cannot be regarded as a contribution to knowledge". Professor Chomsky also finds the book to be one that "cannot possibly be regarded as a work of history that contributes to knowledge". He notes that the careful examination of the book provides internal evidence that much of it is fiction.

51. Professor Williams evaluates the book as to its content, obvious methodology used and concludes that it could serve only "as primary source material for a scholar undertaking a biographical study of the author". Professors Williams and Genovese and the other affiants express particular concern about the defendant authors' misuse of another's copyrighted material under the cloak of "fair use" and its consequences to scholars. Attached to the affidavit of Dr. Goldstein is a description of the investigation and research engaged in by him in doing a documentary study of the case. Comparing that to the sources used by Nizer puts to

rest any claim he may make that his book is scholarly, carefully researched or a contribution of knowledge for future use.

52. Attached hereto is the affidavit of Walter and Miriam Schneier, authors of INVITATION TO AN INQUEST, published by Doubleday, used by McCormick, an editor of Doubleday, who testified to his check of that book when reviewing the Nizer manuscript (Ex. 18). This book Nizer failed or refused to read although available to him.

53. I attach the affidavit of Morton Sobell, co-defendant of the Rosenbergs, who was one of innumerable persons Nizer could have gone to to obtain facts but did not do so (Ex. 19). I attach the affidavit of E. L. Doctorow, author of the fictional work THE BOOK OF DANIEL, who states that he had never been approached or communicated with by Nizer and that his book was written and held out as a work of fiction only (Ex. 20).

The Defendants' Use of the Copyrighted Material in the Infringing Work

54. On the premise that the defendants "only" used 1,957 words of the plaintiffs' copyrighted material which they say adds up to just under one per cent of the infringing works contained (85/100ths per cent)

they state that such use constitutes de minimus use to a vanishing point. This is obviously erroneous. It has been a long established practice and custom of the publishing industry never to use any totality in excess of 300 words from a copyrighted work. Austin Olney, an Editor and Director of Houghton Mifflin Company, in his affidavit, attests to that fact and no contrary authority has been tendered by the defendants in their moving papers. These customs and practices of the publishing industry is founded on protection of a copyrighted work, such protection serving to expand the availability of literary and other expressions contributing to the advancement of knowledge and culture of the community. (See also the affidavits of the experts attached hereto, supra).

55. Beyond the fact that the number of words exceeds the permissible amount and the custom and usage of the industry, which has been recognized by the courts, is that the test is not solely or merely the amount of the copyrighted literary product appropriated but also the quality, value, and use of the infringing work.

56. To put one matter to rest, copyrighted letters as well as uncopyrighted letters are things

of value and as diaries, personal memoirs, and other literary expressions provide valuable information and insight into the author of the writing. They do contribute to the knowledge and understanding of important events. A letter of anyone is "an historical fact". But by so describing a literary expression in letter form and acknowledging their value, it does not destroy the protection they are entitled to and do receive in the courts under the copyright law of the United States. To hold otherwise would deprive all letters by whomever written if it had any information or interest of protection ~~of protection~~ of the copyright laws. That is not the meaning or purpose of the "fair use" privilege.

57. The contents of the ROSENBERG LETTERS once they were published were available to be read byNizer or anyone in the world. The defendants could have derived the information and insight contained in these acknowledged letters of high literary value by the simple, obvious device of not quoting them verbatim. The recognition of the plaintiffs' copyrighted works would not deter or prevent any scholarly study of the case of the use of information contained in the letters. It is a tragic

fact that the defendants here attempt to misuse and improperly cloak themselves with the protection of the "fair use" doctrine, when their book is so devoid of the very quality which they seek to rely on to justify their infringement.

58. Nizer and his codefendants, the publishers, from the inception of their publicity releases exploited the fact that the letters were quoted in the book to induce and permeate the sale of that book to their profit. Nizer, in his appearances on radio and television, in his lecture tours, time and again quoted from portions of the ROSENBERG LETTERS, told his audience that the book contained much more and imported that he had some custody control or possession of these important documents. The reason for this is not incidental. He needed these letters to give some life to flesh out his book so lacking in accuracy and merely a hack repetition of what had been written before. The letters were also used to promote, deceptively, the authencity and completeness of Nizer's product.

59. The defendants, in their moving papers, attached excerpts from well-known scholarly works which contained letters of the persons about

whom the book was. To prove that the letters are of value and are frequently used, that need not be argued. Not one of the books set forth at such great lenth contained copyrighted material which was published without the consent of the owner of the copyright. Admittedly, in many of the books copyright permission to those letters had long expired. But, significantly, the only case cited by the defendants in their memorandum of law directed to letters protected by copyright was the decision of the Supreme Court in Folsom v Marsh 2 Story 100, F. Cas. No. 4901, which affirmed that the letters were entitled to copyright protection in response to the then newly enunciated doctrineof "fair use".

60. While the defendants, on the one hand, claimed the use of the letters ~~are~~ protected in that the number of words were de minimus to the vanishing point and on the other hand argued that the use of the letters were essential to give meaning and comprehension to the reader of the infringing work, to open the window into the sales of the characters under study, they ignore how the letters were, in fact, misused and distorted in THE IMPLOSION CONSPIRACY.

61. On page 394 of the defendants' book, they copied verbatim, chronologically out of context, thus altering the meaning of the letter they chose to use. On page 395, they used two letters purporting to relate it to a meeting in the Death House in February of 1952, while, in fact, one letter was written in December, 1951 and the other in June, 1952. On page 398 referring to June of 1952, the defendants inject three letters written by the Rosenbergs into a setting at that time when, in fact, the letters were written in 1950 and 1951. There are numerous other examples of this kind of misuse from which the author then projects a false picture of the meaning of the letters. This is done as well with correspondence relating to a visitfrom the government when it was seeking to extract a confession and there, too, destroys not merely that letter but the actual intent and purpose of the document and the implications when it, in fact, was written.

62. The letters are extracted in such a fashion, particularly to excise portions where the Rosenbergs wrote about their children, the plaintiffs. While alluding the letters in promoting the sale of the book in the text, Nizer imports that

these letters were contrived by the Rosenbergs to mislead their supporters and the public at large.

63. The defendants suggest that the letters would have been of no value to the plaintiffs had they not been appropriated by the defendants. This is untrue. The Rosenberg case, as the defendants have acknowledged, has continued to be a matter of public interest and curiosity to the present day. It is no accident that the INVITATION TO AN INQUEST was republished in 1973 in paperback edition, that Doctorow's book aroused attention and sale because some associated it with the Rosenberg case. Long prior to the publication of the infringing work, television networks were requesting writers to do scripts about this case and surely Preminger did not need the stimulation of the letters when he met with Wexley in 1969, planning to do a movie about the Rosenberg case.

64. Equally, the defendants action rely on their showing, on incomplete records, that the initial copyright owners of the letters did not appear to derive large profits at that time from the sale of the letters. It does not diminish the number of copies that were sold or the past,

as well as future, value of these copyrighted letters as of this moment and prior to Nizer's writing his book.

65. For the same reasons that the defendants caused damage to the copyrighted letters for which plaintiffs are entitled to recover, plaintiffs are also entitled to recover for the damage done to the unpublished letters caused in substantial part by the misuse of the Rosenbergs' writings and the attack upon the authors' intentions in writing those letters.

WHEREFORE, it is respectfully prayed that defendants' motion be in all respects denied.

MARSHALL PERLIN

Sworn to before me this
22nd day of April, 1975.

Notary Public

LEONARD NATHANSON
Notary Public, State of New York
No. 31-8103125
Qualified in New York County
Commission Expires March 30, 1976

EXHIBIT 1
[Attached to foregoing Affidavit of Marshall Perlin]

Affidavit of John J. Simon

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

JOHN J. SIMON, being duly sworn, deposes and says:

I am the Senior Editor of McGRAW-HILL BOOK COMPANY, and I previously was Executive Editor of MODERN LIBRARY and VINTAGE BOOKS, at Random House, New York, New York. I make this statement concerning THE DEATH HOUSE LETTERS OF JULIUS AND ETHEL ROSENBERG. I have had an opportunity to look at the second, revised, and enlarged edition published in 1954 by Cameron and Kahn, New York, New York, under the title THE TESTAMENT OF JULIUS AND ETHEL ROSENBERG.

First, as to the form: while letters are the traditional means of private communication, they are also an accepted and valued literary form. Books of letters by prominent literary and historical figures are frequently published, much as essays, poems, biographies, and works of fiction are. They have been received and reviewed by critics who have applied

standards common to all forms of writing as well as those peculiar to the evaluation of letters. In the case of these letters we can look at them both individually and as they have been collected, and find substantial literary value. These letters tell the story of an event that begins as a personal tragedy, as seen in the destruction of a family, the imprisonment of the head of the household and then, the remaining parent. The early letters, especially, describe the sense of isolation and bewilderment of their authors. They offer a poignant sense -- political and judicial implications aside -- of being trapped inside the maize of vast and powerful bureaucracy, even as they try to understand their predicament and that of their children, relatives, and friends.

The letters gather strength; they assume a didactic tone, each of the authors not merely being supportive of the other, but buoyed by the hope and presence of a larger and concerned audience. There is an inexorable quality to them as the drama they describe builds to its tragic end. The word "tragic" is used here advisedly, because whatever judgment one

may come to about these letters, either within or without their own historical context, they do approximate, both in their structure and content, the Aristotelian demands for dramatic tragedy. It is possible to argue that they are better or worse than other published letters or other forms of public writing. It is also possible to argue that some of the letters are "better" than others with respect to style, syntax, structure, or content. However, it is not possible to view them as an illegitimate literary form any more than it is possible to deny a place in literary history to James Joyce's ULYSSES, or the CANTOS of Ezra Pound, merely because either the books or their authors were the subject of controversy and litigation at the time they appeared.

Second, on the subject of literary evaluation: when these letters were first published, they appeared in a climate of great fear, later described and condemned as "McCarthyism". They were first privately published and then reissued by a small publishing house whose members sympathized with the authors' cause. None of the traditional daily or weekly book review media took notice of them.

Indeed, the only major review to appear at the time of publication appeared in a journal partly subsidized by an agency of the United States government -- ENCOUNTER -- and one which had, at that time, a total ideological commitment to the American Cold War position. The review reflected the same attitude. To the extent that the book was dealt with in any traditional literary critical way, the reviewer's judgments were determined by his hostility to the political stance of the authors and the political issues raised by their case. Such subjective judgments are, to be sure, legitimate. However, two points should be made. One, at the time of publication of the letters, it was apparently impossible to find a commercial publisher who would evaluate them by their intrinsic value and as to their literary merit. Unhappily, this happens occasionally and, most often, over concerns that have little to do with either politics or literary judgment. Indeed, therehave been a number of celebrated literary works (the novel Catch-22 comes to mind) that found extreme difficulty in finding a publisher, received no attention at the time of their

publication, and only some time later did they receive acclaim, and, incidentally, wide distribution. While the letters were cloaked in a veil of silence at the time of their American publication, they found a vast worldwide audience and they received significant written attention from many prominent literary and religious figures, including the Nobel Laureate, Jean-Paul Sartre and L. John Collins, Chancellor of St. Paul's Cathedral, London, which should attest to their literary merit by any reasonable standard.

Whether the letters will stand the test of time is something that one never knows. One need only look at the way high school and college literature curricula are constantly revised and see, for example, the cyclical rise and fall of the teaching of Charles Dickens, to know that predictions of this sort are impossible. The fact is, however, that the letters have played a not-insignificant role in recent American writing. While they may not themselves be taught in schools, they have certainly influenced the authors of a good many books that are.

In an arena of conflicting literary values and attitudes, it is impossible to provide firm standards for what is "good" literature, "bad" literature, or, for that matter, what is to be classified as literature at all. However, by the most minimal definitions by which we agree as to what is within our literary heritage, from THE BIBLE to the works of Proust, Joyce, Yeats, Eliot, or Becket, for example, it is my view that THE DEATH HOUSE LETTERS OF JULIUS AND ETHEL ROSENBERG have, at the very least, a valid and secure place.

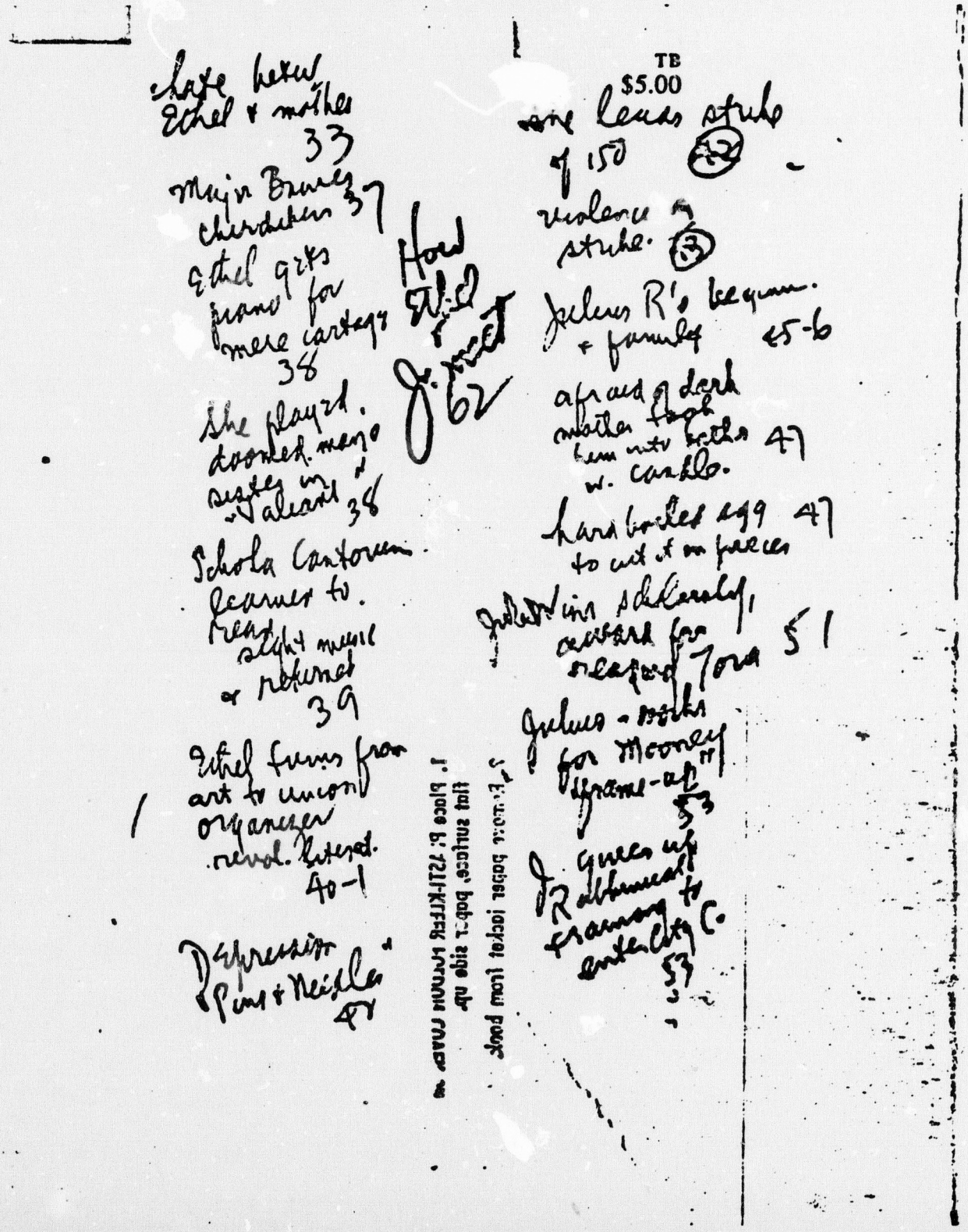
JOHN J. SIMON

Sworn to before me this
21st day of March, 1975.

MARSHALL PERLIN
NOTARY PUBLIC, STATE OF NEW YORK
No. 31-9307700
Qualified in New York County
Commission Expires March 30, 19 6

EXHIBIT 2
[Attached to foregoing Affidavit of Marshall Perlin]

Copies of pages from THE BETRAYERS by Jonathan Root



7 times connect upset by [illegible] (15)

6 " " " US Sup. Ct.

2 Pres. refused clemency (15)

June 18 last Supplication date of Their 14th anniv. marriage (16)

Attny "I'd am ashamed to be an American" (20)

Final plea by Kaufman at 7:45 (21)

Gold reveals explosion Can date from Bridge (16)

Bridge [illegible] (9)

R. denies 4 times (9)

Sobell's arrest by Mexicans (9)

[illegible] (9)

[illegible] (9)

[illegible] (9)

Talks to FBI at [illegible] (10)

Ethel R. [illegible] (10b)

Philip Stearns [illegible] (10)

Ethel's maiden name R.R. (12)

Ad nauseum - facts etc (12)

"Judge of Heaven" Canaris Testimony (12)

4 times date for death charges

The Betrayers (16)

Douglas stay on 14th anniversary of R. marriage (16)

Arg. to vacate Douglas stay (22)

Julius + Ethel brought by station wagon to death house (16-17)

Boys bring her marigolds - not flowers

Douglas stay after about 24 hours (18)

In London preparing for Queen Eliz.-Coronation - pickets (20)

By Jonathan Root

THE BETRAYERS

ONE NIGHT IN JULY

Dublin (20)

Douglas at Unionstown Pa. - when called back (18)

Place de Concorde (20)

Hour of Prayer at Notre Dame (20)

Pickets in front of White House (19)

Milan - 15 men. trade stoppage (20)

So our letters a week to Queen. (19)

Douglas Dillon sent to Paris reunion 21

Fletcher [illegible] R. [illegible] asking him to [illegible] day (141)

Pope Pius XII denies to Eisenh (21)

Exclusive [illegible]

Jonathan Root

Differ. [illegible] 159 in [illegible]

Dissent atty's last day. spells out in her [illegible] (22)

THE BETRAYERS

Ruth Greenglass only 19 yrs old when she supplied [illegible] the last Days

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Coward-McCann, Inc.
New York

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(26)

To a little girl named
ERICA
and the ideals she will learn to cherish

Appeal filed April 6 - automatic stayed eff. May 21. (226)

"They will never betray their friends." (238)

Communist inspired rallies. (236) (237)

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1½ yrs after conviction become issue in Europe 242-7

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"If there be any among us who would wish to dissolve this Union, or to change its Republican form, let them stand undisturbed as monuments of the safety with which error of opinion may be tolerated, where reason is left free to combat it."

—THOMAS JEFFERSON
First Inaugural Address
March 4, 1801

final arg. before Chairman 7:15 PM

Ethel - type - in cell
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desk

radio hand bag
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"Other ages have had individual traitors—men who from faint-heartedness or hope of gain sold out their causes. But in the Twentieth Century, for the first time, men banded together by millions, in movements like Fascism and Communism, dedicated to betraying the systems they lived under..."

—TIME MAGAZINE
December 8, 1947

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"The traitor ... hates his fellow countrymen because he hates the real world which he knows by the testimony of his senses. His power of fantasy enables him to build any country which is the declared enemy of his fatherland into an ideal and beloved world..."

—REBECCA WEST
The Meaning of Treason
(THE VIKING PRESS, INC., NEW YORK, 1947)

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1. A Time to Die

A barbaric sentence of death against two innocent people . . .

—JULIUS ROSENBERG

SHORTLY after daybreak on June 19, 1953, one of the first miserably hot days that summer along the mid-Atlantic coast, sixty New York State troopers arrived at the gates of Sing Sing prison. They had been hastily gathered from throughout Westchester County and some of them had been on duty all night. They swung their cars neatly in a line that stretched across the prison's black asphalt parking lot, and deployed themselves in a series of barricades and roadblocks to defend the prison against a march of protest by uncounted hundreds of outraged Americans reportedly en route that very moment from New York City, 30 miles down the Hudson River. That the marchers never came, and that the troopers only stood and sweated in the sun while the crispness of their black and gray uniforms melted, did nothing to ameliorate the tensions of the day.

In the prosperous and historic village of Ossining, which adjoins the prison and which, until 1901, bore its name and stigma, the inhabitants saw the cavalcade of patrol cars and were indefinably alarmed—more so when they learned that the prison's entire guard force of 290 was confined within the walls this day. The people of Ossining had lived with suspense before but to many of them it had never been quite like this. They stared ap-

prehensively toward the gaunt complex of shabby concrete and faded red brick structures to the south and realized that it had become a fortress. Ossining did not derive its uneasiness from the prison alone which, after all, had been a part of the village for more than 125 years; but Sing Sing was the stage for the last act of a grisly melodrama which had come to embroil the world. The antagonisms of nations were focused on the prison and, as far as the people of Ossining knew, on them too. They did not know what to expect of the day, but they could not escape their involvement by dismissing their proximity as mere historic circumstance.

Then, too, they were held by the unique empathy we all share for another man's impending death, the vicarious thrill of our common fate. And the intensity of this was heightened by the fact that it was not one man alone who was to die, but one man and his wife, and by the fact, further compelling, that the hostility of a large part of the world seemed to stem from a fevered persuasion that this doomed man and his wife were, in one way or another, innocent.

Ironically, the sole refuge from this dreadful imminence was on the prison's death row itself where America's first and only condemned atomic spies, Julius and Ethel Rosenberg, were insulated from it by an armor of hope; hope that they would be spared, hope that they would die like heroes, hope that the world would forever admire them. The world hoped with them, but it did not admire them; it pitied them and it was amazed by them. What the Rosenbergs displayed as courage seemed instead a pathological refusal to recognize that death by legal electrocution is not grand and noble, but slow, degrading and horrible. In the face of it, Julius and Ethel Rosenberg proclaimed their innocence which they would prove, if necessary, by dying with dignity and honor even though there was none of either quality associated with the crime by which they stood condemned.

Julius and Ethel Rosenberg were native New Yorkers, the children of Jewish immigrants who had settled in the slums on the lower East Side of New York. He was a graduate of the City

R. 17 4 holidays 788 As to quiet - no doubt 291 see 292 Green Rob. page 293

College of New York, an electrical engineer, a profession in which he failed, and she a devotee of the creative arts, a distressingly mediocre singer and actress. They had been active in the Young Communist League, in various professional societies serving communist doctrine, and lastly, it was charged though never proven, members of the Communist Party proper. As American citizens they were thwarted, frustrated and unfulfilled, bound by deep personal inadequacies; as Marxist radicals, they were active and successful, secure in the fantasy of being instruments to create a perfect world.

In the spring of 1950, in the wake of the sensational atomic espionage confessions of the British physicist, Dr. Klaus Fuchs, the Rosenbergs were arrested by the Federal Bureau of Investigation and indicted by a federal grand jury for conspiring to give to Russia 1) the "secret" of the atomic bomb, and 2) any other vital U.S. defense secrets they could lay their hands on. They were, one inferred, the diabolical leaders of a major spy ring. Arrested and indicted with them were a fellow CCNY alumnus named Morton Sobell, and Ethel Rosenberg's brother, David Greenglass, who, it was charged, had obtained A-bomb secrets while employed as a machinist at Los Alamos and had given them to a Soviet spy courier sent to him by Julius and Ethel. A federal court jury had found them all guilty, and a federal judge had sentenced Julius and Ethel to death. Sobell had been given a 30-year prison term and Greenglass, because he testified against his sister and her husband, received a sentence of only 15 years.

The judge who had given the Rosenbergs the ultimate penalty had blamed them for the Korean war and had twice afterward refused to amend what became an astonishing punitive precedent. Seven times the conviction had been upheld by the U.S. Circuit Court of Appeals and six times the Supreme Court of the United States could find no cause to review the case. Two Presidents of the United States declared the Rosenbergs criminals of the century and refused without a tone of reluctance to spare their lives. Throughout, the moral censure of whole nations was heaped upon the reputation, character and leader-

EXHIBIT 3
[Attached to foregoing Affidavit of Marshall Perlin]

Copies of pages from THE ROSENBERG STORY by Virginia Gardner

from the cold water flat on Sheriff street, the poverty and slums of the East Side."

She pointed out her own home of those days. "It's hard to believe I ever lived in such a tumble-down rickety building," she remarked wonderingly. A couple of blocks distant she said, "And here's the steam heat flat we graduated to. As Ethel's house was always cold in winter, she'd come over to my house to do her home work, or to other girls' homes where there was heat."

Faintly visible still at 64 Sheriff Street was part of the lettering of Ethel's father's shop where he repaired sewing machines. Behind the dirty glass the place appeared to be unused. The numerals "64" were crudely marked on either side of the entrance. Behind the little shop was the Greenglass home, which Laura remembered as being cold in more ways than one; dark and dreary, moreover, and none too well kept.

The father, whom Laura remembered with affection, was warmer than the mother, but the mother was the dominating figure in the household. To Laura she seemed in retrospect "a bitter woman, whose affection, such as it was, all went to the boys in the family."

More bigoted than religious, the God she pictured to her daughter, Laura said, was always on the mother's side and the side of practicality. If God had meant for Ethel to have music lessons he would have provided them. As he hadn't, there was something sinful about music lessons.

Laura pointed to the old stable across the street, now used for other purposes, and a couple of doors from Ethel's old home, a small burlap bag shop. It was there, where the burlap bags now are, that the "stable" for pushcarts used to be. And how the girls hated it! At the end of the long shopping day, she explained, the pushcarts which then lined Rivington and Essex Streets would be brought to the "stable" by the weary pushcart men. There was always a smell of rotting fruits and vegetables.

The fresh fish shops, which had added their bit to the smells of the block, still were in business. Several small machine shops remained, too, seemingly idle.

A few doors away from 64 Sheriff Street was a synagogue, modest enough but more pretentious than many in the neighborhood. It was the only building in the block which appeared even solid in structure. Laura didn't know which synagogue the Greenglass

then visit their father in another. She felt they would find it less of a shock if they saw their parents together."

Here she supplied a single example of the way the women prisoners understood. A Negro woman made it a regular practice to watch discreetly when Ethel would go into her cell alone; then if she saw Ethel's shoulders begin to shake, she would go in, put her arms around her and comfort her.

Another story was told by a woman who arrived in Greenwich Avenue shortly after Ethel left for Sing Sing. A young Puerto Rican woman prisoner, a devout Catholic, at mention of Ethel's name flared up and told the newly-arrived prisoner: "I'm not very bright but I know right from wrong. No matter if the Pope himself was to tell me Ethel Rosenberg was bad I wouldn't believe him because I know she was a saint on earth."

The woman went on to tell the new arrival how Ethel had nursed her through her illness when she was trying to recover from the dope habit. Her remarks were made in June 1951, about 18 months before the Pope first urged clemency for the Rosenbergs.

Martha was with Ethel when she returned after hearing sentence pronounced on her and Julie. Ethel made no comment on the fact that Judge Kaufman had ordered her and her husband to die in the electric chair. The only thing she spoke of was the below-the-belt attack on Julie and Ethel as parents which he made in a speech on sentencing them. Dazedly Ethel spoke of it to her friends in the jail, and, knowing no woman could be a more concerned and loving mother, they were enraged, Martha related.

"A jail official came up to her when she got back and offered her a sedative. I think she sort of put her arm out as if to steady Ethel. But Ethel refused the sedative and walked erect and alone to her cell."

The women, talking together, figured out why. She didn't want to do any single thing which the press could get hold of and headline, to indicate her morale was breaking. It was part of her feeling of responsibility. She wasn't a criminal, she was a political case, she told them, and they knew as much. They were glad she wouldn't give the papers the opportunity to say she needed drugs to make her sleep.

"She was very proud. It was only that remark about her and Julie as parents which stunned her," said Martha.

One prisoner, Isobel, was more realistic than Martha about Ethel's sentence. It wasn't that she accepted the death sentence, but she soberly faced the idea of a long term for Ethel. Isobel's cell was on the floor where Ethel was first placed and where she was kept for many months. If convicted, Isobel expected to serve a two-year sentence, possibly there in the Detention House, as some with short sentences did.

Telling of Isobel, Martha now said: "I think she loved Ethel so much that she would have given her own life if it could have saved Ethel's. She had children of her own, not too far apart in age from Ethel's boys. She promised Ethel that when she got out she would take Michael and Robby and bring them up with her own, and as her own. At the time the boys were in a city shelter."

She was only one of Ethel's many friends. The jail officers were well aware of the loyalty Ethel Rosenberg inspired among the women. Although it was strictly against the rules, often at night, when all were in their bunks and lights out, Ethel's clear soprano voice would soar through the corridors, comforting the silent women who wept into their hard pillows in the dark cells.

At times it was Brahms' Lullaby, or The Peat Bog Soldiers, or a ballad, or some song the women had told her they wanted to hear. "It was her way of saying good night, and no officer seemed to want to stop her—it was too beautiful."

There was the incident around the Mexican film, "The Pearl," revealed by another former inmate of the Women's House of Detention. It was one of the few moving films shown there, the story of a fisherman who finds a valuable pearl in an oyster.

The pearl eventually becomes the subject of great envy on the part of neighbors in the fishing village, until, in a struggle over it, the fisherman's little child is killed. The picture ends with the fisherman standing on the shore, giving the pearl to his wife and warning her to throw it far out to sea.

When Ethel's friend, Anna, realized she hadn't been at the showing of the film, she told her what she had missed. "I know," Ethel said, adding that she remembered a review of the film. "I stayed away. I couldn't watch the killing of the child."

Both Anna and Martha spoke of Ethel's warmth and a quality she had of making the best of things so that those around her forgot their troubles.

Ethel never laughed at her but put on a campaign to get her to cry less and to see some joy in life—even where they were. With a gleam in her eye Ethel once asked the Belgian woman why she wore lipstick. Oh, the reply was, she liked lipstick. There you are, Ethel said triumphantly, you do like to make yourself attractive.

In time Ethel began to make progress in her campaign to make the forlorn woman "not less pious but more conscious that life can be a fine thing and that it's always interesting," Martha said.

It was Anna who told the most graphic story of the relationship between Ethel and Julius. Martha had heard probably more of Ethel's confidences, but it was Anna who witnessed the incident that she described in her curious mixture of jail slang and toughness and compassion.

She told first of how Ethel never tired of talking about Julie. "Nothing she said was phony, but I just couldn't believe that any marriage was all she said hers was. But I'm telling you, after what I saw in that pie-wagon (prison van), jolting along the streets on the way to Foley Square, why, I knew that Romeo and Juliet weren't even in it."

The big van in which they took prisoners to court had called at the West Street jail first, and there the men were loaded into it. "Julie had the seat I learned later the men always reserved for him —next to the grating which separated men from women. It was a pretty large open steel mesh screen.

"The women who were going to court that day held back and let Ethel take her seat. I sat down opposite her. It was dark in the van. I didn't even know at the time where Julie was, for you couldn't see any faces. Then I struck a match to light a cigarette.

"I'll never forget what that match lit up. Julie and Ethel, kissing each other through that darned screen. I didn't even wait to get a light, I blew it out."

Her lips quivered and she fiercely swiped at the tears that would come in spite of herself. Lighting a cigarette with shaking fingers, she said, "I kept seeing that picture when I—when I read about the two hours they had together that last day, and wondered if at last they got to kiss each other without a screen between them, once before they died."

PART XII

"I DON'T KNOW who named Ethel's cell 'Rosenberg's Delicatessen,'" Martha smiled, "but the name stuck.

"Ethel got a kick out of it. She said she ought to get credit for bringing a little touch of the East Side into that terrible place, which of course the East Side couldn't be blamed for. It was the first time she ever had lived on the West Side, and she thought the East Side preferable. Someone suggested the delicatessen ought to get her a few days off for meritorious behavior—that was before the sentence."

Anyone in her corridor hungry at night would go to the Rosenberg Delicatessen. Although she didn't smoke, Ethel always had an ample supply of "commissary"—candy bars, some fruit, a sandwich or two, little cakes, and jars of jam.

"Occasionally she even had a pack of cigarettes, if she had an extra quarter to spend on commissary that day, for her friends to enjoy. The jam wasn't free world jam—"

This was a new term, and Martha explained that "free world" meant the world outside the jail walls, so that "free world" food was food bought at the commissary, and was vastly different. The bread served at the detention house, for instance, was bread made by inmates at Riker's Island, a city institution, and heartily disliked.

At mealtimes, jail personnel looked the other way while women who had lotion or cold cream jars emptied into them the usual pat of apple butter or, more rarely, jam which accompanied a meal. These were taken to their cells because everyone grew hungry at night.

With a piece of "free world" bread from a sandwich, visitors at the Rosenberg Delicatessen could dip into one of Ethel's jam jars with a wooden tongue applicator, filched by the women from the clinic, or the handle of a toothbrush, and have a minor feast.

Ethel's popularity with the prisoners extended beyond the fifth and ninth floors, where she spent different periods of her jail stay. She attended all the religious services in the jail, Jewish, Catholic, Christian Science, whatever the sect. There she met her friends, and took part in the singing with zest.

to save Davey," Ethel had an idea who it was that arranged those "table visits." That was in the period when David Greenglass was being cultivated sedulously by the government. In the original indictment against Ethel and Julius, Greenglass and his wife Ruth were named as co-conspirators but not as defendants.

Then there was the time, after sentence, followed by David's 15-year sentence, when Ethel told her companion that she had learned her mother had had an audience with Judge Kaufman prior to the sentence—and had pleaded only for David. "Ethel spoke in a dull, resigned voice, unlike her usual one: her eyes had a look of misery. Each of these hurts from her mother was a fresh blow.

"Yet Ethel never spoke of her mother with hatred," Martha said, "only with sadness—but what sadness!"

Even when it came to David, Ethel described him as "weak" and said he'd been "a spoiled kid," but explained that he was dominated by a designing and much shrewder wife--who has her freedom today, having never been indicted.

Martha and Ethel had many searching talks. "I disagreed with her on lots of things," Martha ruminated. "She was too good. At times she almost annoyed me with her goodness. Not that she was goody-goody in any way—she believed in enjoying life to the full and wanted everyone to.

"It's hard to say what I felt. But—she seemed too charitable toward her own family. I knew what a family could be like and what it meant to someone in jail, and I resented the dirty deal she got from hers, more than she did.

"Little things—I warned her against lending commissary money to certain women in our cell block. Then she'd confess she had. When it wasn't repaid, she shrugged it off—and would lend it again.

"Big things, too. At times I just didn't see how anyone could be like she was. I mean, she seemed to believe so much just on faith.

"I was different. I didn't think any man could be as perfect and as smart as she thought Julie was. Also, I'd get to thinking how no one at that time but her lawyer was sticking up for her and I'd get bitter, because already I loved her, and I wasn't the only one inside who did.

"But never a word of bitterness crossed her lips. She would say, that's all right, the workers will find out the truth about us, that

PART XIII

EVEN IN THE West Street House of Detention Julius Rosenberg's love of people could not be eclipsed entirely. Friendly and cheerful, he inspired in many of his fellow inmates a desire to show that they felt he was one of them, that he belonged—even when he was segregated.

This feeling on their part seemed all the stronger when Julie, in solitary, demonstrated that his spirit could not be broken by the death sentence. Some of them were at a loss as to how to express it except by kidding. And in this typical jail-house way of connoting camaraderie, Julie proved "he could take a ribbing and hand it right back," according to Joe, a former fellow-inmate.

Often Julie sang or whistled as he paced back and forth in the segregated cell in which he was placed after sentencing. One prisoner found some pretext to approach his cell, and called to him: "Hey, Julie, you're shaking the walls with that big booming voice of yours. The papers say your wife is a real singer. And we know your brother-in-law has his kind of singing. Now why don't you give us a break and just keep quiet?"

Julie acted the picture of hurt innocence. "What's wrong with my singing?" he demanded. "It sounds great to me."

"Aw," said his fellow-inmate, "I've only got a year and a day. I ain't got time to tell you."

But other prisoners were thinking seriously of showing Julie, and the authorities, in more tangible form their refusal to consider him one apart. Thus after careful planning, and with the cooperation of the Jewish chaplain, they obtained permission from the warden to have Julie attend the customary Seder held each year in the West Street institution on the occasion of Passover.

Of the 30 to 35 members of the Jewish community in the house of detention at the time, several were accused of what in jail terms were "twilight crimes"—income tax violations, using the U.S. mails to send fraudulent statements of assets, or false bankruptcy—and these men occupied a certain position of prestige in the jail. On a humanitarian basis they had backed the plan for Julie to attend the dinner and celebration, after which all the Jewish prisoners supported the project.

The attorneys arrived then, so Ethel and Julie were saved the need of continuing the painful exchange, and Joe could hear the murmur of voices begin in other cells, muted, but relieved, now that the men no longer had to witness this agonizing effort for self-control.

Julie and Ethel were led out of their adjacent tanks, preparatory to a conference with their counsel. But here occurred an incident which required even greater control on the part of Ethel. As she was escorted down the corridor, the elder Bloch, Alexander, her own trial attorney, and Harold M. Phillips, Sobell's lawyer, both over 70 years old, approached. The elder Bloch was weeping unrestrainedly. Ethel went to him, put her arms around him tenderly, and "how she did it I don't know, but she stood there, dry-eyed, comforting him," said Joe.

After the conference Ethel was locked in her cell and Julie was locked in the tank with Joe. He told him he had made one request of the younger Bloch: that he go see his mother at once, "as she will be frightened to death."

"Why did they keep them there after the sentence was done with and the lawyers gone?" Joe was asked.

"We soon learned," he replied grimly. "One of the deputy marshals was sadistic enough to tell Julie. The marshal's office was waiting for instructions from Washington as to whether they'd both be shipped to Sing Sing that very day."

Wishing to forestall any attempt by the deputy to taunt Ethel with the same announcement, Julie immediately called out so that she could hear: "Ethel, don't be scared if some clown tells you we may be taken to the Death House tonight—everything will be all right, they won't do it."

"Julie had tremendous bounce," said Joe, smiling faintly in retrospect, although his eyes were moist. "Soon he was discussing the case as impersonally as if he were not involved at all. He began saying that the public was bound to move before long, and outlining steps in a post-trial campaign. That their case must evoke a sense of outrage in time he had no doubt at all."

But the talk was in low tones, outside the hearing of deputies, and thus, outside of Ethel's hearing. "She must have thought Julie had gone glum, and to reassure him, she began to sing to him," said Joe.

unruly, that she was old and not well, and that she would have to have help or would take them to a police station. It was not long until she did turn them over to city authorities."

During the pre-trial conferences the question arose as to what Ethel and Julie would reply when prosecutors would ask the inevitable questions about Communist affiliation. They promptly said their position would be that their political ideas were their own business.

"My father took another position," said the lawyer. "'Let's assume you were Communists,' he said. 'It would sound better to the jury if you said so, in that case.' No, they said, whether they were or weren't, they should claim their privilege under the Fifth Amendment. The issue would be brought up, they said, 'only to turn us into informers or to create the idea all Communists are spies.'"

Asked if any witnesses could have been found to testify for the Rosenbergs, Bloch said, "One or two, on fairly minor things. But Ethel wouldn't have it. Said it would injure them in their professions. That's the sort of people Ethel and Julie were."

(Such was the hysteria at the time that Julie's sister, Ethel, told me at a later date: "No, we weren't at the trial. My sister and I were both home, with our heads buried, weeping and ashamed. We didn't know any better then." That was why, she said, it was months later before she knew that Bloch was looking for "that silly old console table which was in my basement all along." As she spoke, tears coursed down her cheeks.

(The table was the subject of seemingly endless testimony at the trial, the prosecution claiming it was given Julie as a reward by "the Russians." After the trial the defense obtained an affidavit from a Macy's department store executive affirming the Rosenbergs' testimony they bought it there, for $19.97. Julie's sister had taken it from the Rosenberg flat when their machine shop was liquidated and their flat rented. "It wasn't much but it was the best thing they had," she said.

(Later Julie's sisters and mother participated actively in the public campaign to obtain justice. At all stages they visited Ethel and Julie. Before a Committee to Secure Justice in the Rosenberg Case was formed, Attorney Bloch said, the Rosenberg family raised $500 to pay for typing of the record and typing of the brief for the U.S. Court of Appeals. Moreover, the family rented an apartment

PART XVI

WHEN THE FINAL drama-packed battle for the lives of the Rosenbergs began, in mid-June, 1953, a slim young woman seated among defense counsel thought fleetingly of how different was the setting from that of earlier legal battles.

Three years ago, except for her help, Manny Bloch fought alone. Now ranged alongside Bloch and the young woman lawyer, Miss Gloria Agrin, were the nationally known figures, Prof. Malcolm Sharp of the University of Chicago Law School and John H. Finerty, who had served in the defense of Tom Mooney and Sacco and Vanzetti.

Now instead of only hostile eyes in a courtroom, were many friendly faces. This was on Monday, June 15. On Sunday, June 14, the biggest picket line in the Capital's history marched stony-eyed and relentless before the White House. The N. Y. *Times* estimated it at 7,000, quoted a veteran police official who remembered nothing like it before; the Rosenberg Committee estimated it at 15,000.

When Bloch had carried the Rosenbergs' case to the U.S. Court of Appeals he and Julie and Ethel had had to worry over money to pay a typist to type the record. Subsequently more than once Bloch dug into his own pockets to finance legal actions. Now support poured in from over the world, Rosenberg committees in France and Italy ranged from right to left. Now the race was against time, however, and in the rush of legal moves preceding the present pitched battle, there had been no time to prepare a brief on the new evidence.

In the 1951 trial, scientists, with one exception, who were listed as government witnesses had failed to appear. But they remained mute. Now they had spoken out. The dam was broken when Prof. Harold C. Urey, noted atomic scientist, wrote a letter to the New York *Times* Jan. 3, 1953, after which Prof. Albert Einstein appealed to the President for clemency. When Bloch and Sharp argued for a new trial on the basis of new evidence June 8 before Judge Irving R. Kaufman, Prof. Urey was in the courtroom. Three days before defense lawyers faced the Supreme Court, on June 12,

Prof. Urey had wired President Eisenhower pleading to see him. The wire was ignored, despite its saying in part, "New evidence makes even more plain what was plain enough before, that the prosecution's case has no logic in it, and that it depends upon the blowing up of patently perjured testimony."

But with logic and justice and new evidence on their side, defense counsel had been unable to get any court to listen to it. Bloch had come to Washington the Thursday before, June 12. Miss Agrin joined him on June 13; other counsel on June 14.

In a series of interviews, prior to Attorney Bloch's sudden death, the young woman lawyer told the story of the last crucial struggle, of the mounting tension during the five last nightmarish days, of their defeat which was not a defeat—and the inglorious victory which belonged to Attorney-General Brownell and President Eisenhower.

They were now before the court on a request for a review, and for stay of execution sought pending final Supreme Court action on three appeals, which would be filed in due time from U.S. Court of Appeals rulings, were the stay granted.

To save Ethel and Julie from death at 11 p.m. on the coming Thursday, June 18—their 14th wedding anniversary—one of three possibilities remained: a stay from the full court or any one member of it, a writ of habeas corpus or clemency from Eisenhower.

Three times previously a date had been fixed by Judge Kaufman for them to die. Three times previously the Supreme Court had denied Bloch's request for review.

Bloch had gone to Chief Justice Fred M. Vinson on his arrival the week before, been sent by him to Justice Robert F. Jackson, Justice of the circuit in which New York State lies, and Jackson, after hearing Bloch argue for an hour, had decided to recommend it to the full court for consideration. The court had met on Saturday and adjourned without decision at 4:50 p.m. This Monday session was its last day of the term, after which it was scheduled to adjourn until October.

On Saturday, too, Prof. Sharp obtained an affidavit from Prof. Urey, and on Sunday, he and Attorney Finerty retired to the office of a highly conservative law firm in Washington and worked on the writ of habeas corpus, to be presented in case the motions before the court failed.

comment"—which he did—Prof. Sharp disappeared from the room. "He couldn't take it," the woman lawyer recalled later. Then, when the lawyers stole away from work and stood in Lafayette Park opposite to watch the picket line, moving four abreast, Negro and white, old and young, she saw Manny's eyes kindle, saw tears glisten on Sharp's cheeks.

Waiting with the lawyers were several reporters, including one woman, with many others roaming the halls outside. About 4:15 p.m. the lawyers were told the decision was against them, with only Justice Hugo Black dissenting. Later Justice Felix Frankfurter said he could not join in the denial of the writ.

On the earlier vote, on a stay, it was a 5 to 4 decision, with Justices Frankfurter, Jackson, Douglas and Black favoring a stay, and with Justice Burton favoring a hearing but voting against the stay. Thus it was by a narrow margin the Rosenbergs lost on this original vote. The attorneys set to work calmly to decide what individual justice to approach to request reconsideration on the stay, for any one justice can grant a stay at any time. They learned that Justice Black, facing an operation, had departed at once for a hospital leaving word he would see no one including the Rosenberg attorneys. Shortly before 6 o'clock, however, they stood before Justice Douglas with a request to be heard.

Miss Agrin did not go in with them but was given an account of it. "Mr. Justice Douglas said, 'Look, I have my car all packed ready to leave for the West at 7 o'clock tomorrow morning. How can I do anything for you?' Manny replied in effect, how could he fail to when two persons' lives were at stake? They argued for nearly an hour. John Finerty told me he pointed out that 'if the government had put on the witness stand the three atomic experts it promised to call, Dr. Urey, Dr. J. Robert Oppenheimer and the gentleman with the unpronounceable name [Dr. George B. Kistiakowski], they would have had to testify that it would be absolutely impossible for a scientific moron like Greenglass to have drawn those sketches.' He argued the case was 'inherently incredible.'

"Douglas then agreed to remain. He said rather pointedly he would have to read the record. Also he said he'd have to have a summary of the new evidence at 10 a.m. the next day."

The light burned in Justice Douglas' office until 2 a.m. Apparently

he was doing what none of the justices had done—reading the record. At any rate Justice Black confirmed in his June 19 opinion that ". . . this Court has never reviewed this record and has never affirmed the fairness of the trial below." Four times now the court had refused to review it. Yet Eisenhower led the nation to believe, in his final denial of clemency statement, that it had been reviewed many times by the courts.

Although all the lawyers had worked until 4 a.m. Monday they set to work with renewed vigor after leaving Justice Douglas—Attorneys Sharp and Finerty to tackle the summary of the new evidence, Bloch and Miss Agrin to work on the clemency petition. The brief on the new evidence still remained unwritten. Bloch, after being in and out of courts almost daily since June 1, had rushed to the Court of Appeals the day after Judge Kaufman refused his motion for a new trial and denied a stay. The Court of Appeals instead of granting a stay, ordered him to argue then and there, which he did on five minutes' notice and without a brief. From there, the day after their unfavorable decision on the new trial motion, he had come to Washington.

Bloch and Miss Agrin dictated, with relays of stenographers working until 3 a.m.; he slept for an hour while the typing of the clemency petition was completed, then rushed to the airport, to present it at Ossining Tuesday morning for the signatures of Ethel and Julius Rosenberg. He had ahead of him the ordeal of taking the boys in to see their parents, knowing it might be for the last time.

The other three lawyers still were sitting in the Supreme Court counsel room when he returned, waiting to hear from Justice Douglas. It was 5:30 p.m. when Bloch walked in, took them aside, parried their questions, and then, with a shake of the head as if still wondering how a woman facing death so shortly could do it, handed them a document.

"It was a letter Ethel had written to the President—completely unexpected by Manny until she had handed it to him that morning. The warden had censored it quickly and let him bring it along. It was to be given to the President only if all else failed. Manny read it aloud to us, softly, out of the reporters' hearing. Sharp was plainly moved. Manny, hollow-eyed by lack of sleep and strain, again shook his head in awe, still astonished at Ethel's beauty and

a precision of mind at a time when a lesser person would have been shattered. Then Manny fell asleep, sitting in a chair, dead to the world swarming with lawyers, judges and newspapermen."

b Urging the President not to let their death be "an act of vengeance," the letter alluded to an earlier letter to Eisenhower written by Michael, and spoke of his "bright young mind and homesick heart." That day, as Manny had left Sing Sing, holding a boy by each hand, he halted briefly to answer questions and be photographed by TV cameramen. There was a tug at his coattails. It was Mike, pulling and whispering, "They're innocent! They're innocent! Tell 'em they're innocent!" But later, according to the *Daily Worker*, reporters again stopped them. And when a reporter, heedless of the serious 10-year-old Mike and the fun-loving 6-year-old Robby, asked Bloch if the Rosenbergs were going to confess, Michael screamed, "They'll never tell a lie!"

Throughout the 12 hours Tuesday when Justice Douglas studied the case, Attorneys Agrin, Sharp and Finerty ate in shifts, expecting a decision momentarily. Reporters sat around, asking desultory questions about the new evidence. Then they began asking questions with more interest. It was obvious even then that some were beginning to have doubts about the guilt of the couple their papers or wire services had been calling "atom spies" so glibly for three years, Miss Agrin noted.

c Manny was still asleep when they received a summons to a telephone in the clerk's office, and the information that a delegation of clergymen leaving the White House told reporters the President indicated he would not commute the sentence. (The clergymen had told Eisenhower they spoke for 2,300 of their fellow-clergymen who asked for commutation.) They awoke Manny to tell him. "That was the tip-off, the death knell," said Gloria Agrin.

At 7:30 o'clock that evening (Tuesday), informed by Clerk Willey that Justice Douglas would take two hours off for dinner, the lawyers departed, met a barrage of cameramen, and, on the steps, visiting lawyers and other friends. All day the corridors had buzzed with activity although the court had recessed for the summer. Throngs of tourists gazed wide-eyed at the tall brass gates behind which, their guides said, Justice Douglas wrestled with the question of whether or not to grant a temporary reprieve for the Rosenbergs.

In the dramas of Shakespeare or the Greek tragedians, national crises or disasters or the stirring affairs of state, often are depicted in a setting of storm and thunder, a wild wind, splitting heavens and shaking firmament. But, Miss Agrin noted, walking back from their leisurely dinner with her fellow attorneys, Washington was at its most beautiful, the mild summer night fragrant with flowers, a new moon rising in the sky. The perpetually youthful Finerty claimed they were sure to win the stay as he'd seen the new moon over his left shoulder. Bloch said cheerfully that the longer they waited now the better the news would be. "We were that way, hopeful every day," Gloria Agrin said. "As soon as we'd get licked in one quarter, we'd start action in another, and with action, hope would come."

At midnight a bleary-eyed Clerk Willey, who had been working with Justice Douglas, appeared in the counsel room to say there would be no decision that night.

It was at 11:10 o'clock the next morning, Wednesday, when Clerk Willey's face appeared in the counsel room where the lawyers had been waiting since 10 o'clock. Normally such a decision would have been read to them. But not wanting to keep them in torment, the clerk announced breathlessly, "Stay granted." Miss Agrin told of their short-lived joy. "Prof. Sharp's face was wet with tears. I found myself laughing and crying. Everyone was hugging everyone else. Don Rothenberg of the Washington Rosenberg Committee took off like a shot for the picket line. We shoved our way through cameras and went back to the hotel. Friendly lawyers and newspaper men kept popping in, and staying. From the picket line, Charlie Stewart (American Labor Party official) and others. We finally decided to have some drinks and celebrate. We phoned for the drinks, but before they could be served, the phone call came from New York.

"It was a wire service man. It had just come over the wire that Brownell had requested the reconvening of the full court. Finerty pooh-poohed the report, said it had never been done. Positive it was a rumor that would prove wrong, he gayly took off for home."

Shortly after 6 o'clock that evening Chief Justice Vinson announced a special term would open at noon next day. This was not the first time that Brownell had shown the iron fist in the thinly gloved hand. Periodically in the metropolitan press, and intensifying

in boldness and frequency after April 1, such items as this were planted: "It appeared last night that their only possible hope of being spared was to co-operate with the Justice Department, which could recommend executive clemency, denied by President Eisenhower on Feb. 11." But on June 2, in a brain-washing session minutely described by Julius in a letter to Bloch, Brownell through Federal Director of Prisons James V. Bennett formally offered a deal—if they "cooperated," their lives would be spared. First news of this was contained in a letter sent Bloch that day by Ethel and Julie in which they declared, ". . . human dignity is not for sale."

As long ago as January 22 (1953), it had been obvious what was meant by "cooperate." The Justice Department line was neatly set forth in a letter appearing in *The Times* of that date, written by William L. White, member of the board of directors of the American Civil Liberties Union. White said the Rosenbergs must die unless they "confess," but made it clear not just any confession would do. White wrote, "So if at this late hour they could be made to see their true situation and in atonement make what the Federal Bureau of Investigation would recognize as a full and complete confession, then we would have a different situation." It didn't take Bennett's visit for Julie to know what Brownell wanted: a "confession" which would link "atomic espionage" with the Communist Party.

On the morning of Thursday, June 18, newspapers referred to the special term of court, to convene that noon, as only the third in the Supreme Court's history. The *Times* said it resulted in "a strange and confused situation that veteran officials of the court said never had arisen before." In Congress Rep. W. W. Wheeler of Georgia had promptly introduced a bill to impeach Justice Douglas. Rep. Harold Velde (R., Ill.), chairman of the House Un-American Activities Committee, had declared himself unhappy over the Douglas stay, said he would urge Vinson to accept Brownell's request for a special term.

Douglas in granting the stay acted on a new point of law raised by other attorneys, Daniel Marshall of Los Angeles and Fyke Farmer of Nashville, whom he had heard briefly Tuesday morning on a separate motion for a writ of habeas corpus. He granted it only until the District Court and the Court of Appeals could determine the applicability of the Atomic Energy Act. If it applied, it

would mean only a jury could impose the death penalty, and only when intent to injure the U.S. was shown, and Judge Kaufman would have acted without power in invoking death.

Justice Douglas had warned that "It is . . . important that before we allow lives to be snuffed out we be sure—emphatically sure—that we act within the law. If we are not sure, there will be lingering doubts to plague the conscience after the event. . . ." He declared Congress had prescribed the precise conditions under which the death penalty could be imposed. "And all violators—Communists as well as non-Communists—are entitled to that protection."

When in this unprecedented action of interrupting a recess to consider a stay granted by a member, the court met at noon Thursday, all nine justices were in their places. Some had come from the far West, Douglas had heard the news in Pennsylvania and turned back, Black now ignored the needed operation. The courtroom which seated only 300 was jammed. For the first time in history spectators were allowed to stand in the rear. Hundreds queued up in the corridor outside. 2,000 milled around outside the building or streamed through Capitol corridors.

The picket line remained before the White House, augmented by new thousands who arrived by special train from New York that morning. On the train was Mrs. Sophie Rosenberg, from whom the news was being kept that the court was meeting. She was taken to a hotel in event it was decided to ask her to try to see Eisenhower—if it were necessary.

The Monday previous the Republican *Chicago Daily News* had carried a full-page ad of a letter to Eisenhower asking clemency, signed by leading residents of Chicago. The New York *Times* began alluding to the National Committee to Secure Justice for the Rosenbergs instead of to "an organization calling itself," etc.

Finally, too, the long censored news of the mass protests in Europe broke through the press. Up to now most of the appeals by prominent figures in Europe had been suppressed—as was the first intervention with the President for mercy by Pope Pius XII, concealed from former Pres. Harry S. Truman by the Dept. of Justice. Similarly concealed were appeals by the Rabbinates of France and Italy. A June 16 *Times* story from Paris said the U.S. Embassy felt that "the Communist effort in France" to save the Rosenbergs had "exactly the opposite aim in mind," that "the Communists

expect the White House to adopt a contrary line so as not to yield to their pressure."

However, a longer story by Harold Callender from the *Times* Paris bureau the next day took a completely contrary line. It declared the American embassy was "flooded with protests and delegations that take up about half the Ambassador's time." And while saying the U.S. Embassy claimed 90 per cent of the French protest was inspired by Communists, the correspondent listed among those protesting, Edouard Herriot, speaker of the National Assembly and ex-premier; former prime ministers Paul Boncour and Edgar Faure, and André Maurois, George Duhamel and Roger Martin du Gard, members of the French Academy.

"Maurice Cardinal Feltin, Roman Catholic Archbishop of Paris, also belongs to the 10 per cent," the newsman Callender noted drily in the dispatch. He quoted the conservative *Le Monde's* Washington correspondent as writing that the "ritual murder" of two "victims of the cold war" was being prepared. And he concluded that even though names of prominent Communists such as Louis Aragon and Pablo Picasso were listed alongside noted conservative names, the movement represented more than "Communist propaganda." As well as resentment against U.S. foreign policy, he wrote, "there is a concern for justice and doubt that it has been done in this case."

A later dispatch from France said President Vincent Auriol "showed his concern" in a letter to Georges Bidault, who showed it to U.S. Ambassador Douglas Dillon, who confirmed it was forwarded for White House consumption. Veteran labor leader Leon Jouhaux was another urging clemency, and Prof. Francois Perrin head of France's Atomic Energy Commission, asked mercy. Catholics were called to a special hour of prayer for the Rosenbergs at Notre Dame Cathedral.

Police were called out to guard embassies in Paris, London, Milan, Toronto, Vienna, Brussels and elsewhere. In Sydney, church leaders spoke out. In Melbourne tugmen threatened boycott of U.S. ships. The Brussels section of the Socialist General Trade Unions of Belgium cabled Eisenhower. In Italy Ambassador Clare Booth Luce was besieged with pleas, including one from the General Confederation of Labor. In London Hugh J. Delargy, Labor member of Parliament, announced he sent to Eisenhower

on behalf of 40 legislative colleagues a message that executing the Rosenbergs would "harm every ideal which our countries share."

Not only were all the justices in their places when the special term of court opened. So were all the defense attorneys. Attorney Finerty, who received the news when he reached his New York home, and had with his wife immediately taken a taxi back to the station, arrived "as peppy as ever" with Mrs. Finerty early that morning. While shaving he dispatched Miss Agrin to carry questions in to Sharp and Bloch and, with their replies, was brought up to date on events. It had been a long night for them all. Working in a local office of friendly lawyers, it was 4 or 5 o'clock before anyone suggested sleep. Manny had phoned Paul Villard, attorney who in his work for the Rosenberg committee had become a good friend, to let him know that the Douglas stay might not be upheld.

He also had phoned James R. Newman, former general counsel for the Atomic Energy Commission, who had helped draft the Act, and reached him finally at Cape Cod. He asked him to come to Washington that night. Newman replied he was without clothes save beach attire, that it was pouring rain there, but that he would come if Bloch would have clothes waiting for him at the airport. "Newman was neither for nor against the Rosenbergs, but had the human decency to go out of his way to give an honest judgment where it might affect two lives," Gloria Agrin explained. "He started on his 600-mile journey, taking a cab to Boston, sleeping until a plane took off at 7 a.m., arriving at 10:30 and changing clothes in a men's room in the airport."

The open court proceedings lasted for about two hours, although it was not until 6 p.m. that it was known that no decision had been reached and Ethel and Julie at least would not die that night (June 18) at 11 o'clock, the customary hour of Sing-Sing electrocutions. Although President Eisenhower the following day was to speak in flowery language of "When in their most solemn judgment the tribunals of the United States have adjudged them guilty and their sentences just," newsmen of all varieties wrote more candidly of the Thursday proceedings, and the Friday proceedings were yet to come.

"The justices were tense and snappish," declared the *Times* in a Sunday review of the week. The Friday *Times* reported Finerty charged the government had "permitted a fraud on this court to

tion of law" involved. Bloch told the court that Newman was "troubled" by "the many apparent conflicts in the punitive provisions of the Espionage Law and the Atomic Energy Law," and pleaded for more time—at least a month—to collect material on the new point of law. He pleaded that the court follow its customary procedure when a new issue of substance is raised.

When the justices retired about 2 p.m., the attorneys went downstairs to the cafeteria, "but all any of us could think of was a glass of iced coffee, and then we just stirred it, looked into it," Miss Agrin recalled. Newspaper people sat all around them but something had happened to their zest in the story as just news, and they let the attorneys alone. The lawyers walked back to the counsel room. From then on, "it was just plain torture." Bloch was the only one to maintain an outward calm. Finerty was chain-smoking. Sharp, who usually smoked one cigarette after dinner, was smoking nervously. Newspapermen and women sat with them. Their sympathetic silence was in contrast to the Tuesday night watch, when a French correspondent's wife, entering with the lawyers after dining with them, was surprised to see them playing bridge in the counsel room, the cameramen standing on chairs taking shots of the hands of the clock.

As she stared at the judicial faces which lined the walls, every wart and wrinkle of them now familiar to her, Gloria Agrin caught herself thinking of the late Justice Frank Murphy, the stern, ascetic man who was known for his courageous dissents. If he were alive, then there would be one more stalwart who could be counted on, like Peter Cauchon, the bishop whom Bernard Shaw in "St. Joan" depicts as upholding the independence of the ecclesiastical court according to his lights. When, before the Maid of Orleans' trial by the Inquisitor and the court, the British Earl of Warwick declared, "I tell you now plainly that her death is a political necessity," it was Bishop Cauchon who replied pridefully that "The Church is not subject to political necessity, my Lord." That was all they could ask and hope for, that the court was not subject to Brownell's dictates and that the stay would remain in effect until the District Court ruled.

When at 6 p.m. they were summoned before the court, only the pale, querulous face of Justice Burton was on the dais, seeming disembodied above the black robes. The dry words that the court

would reconvene on Friday fell dully on their ears, and, in a sort of trance, they walked out, into the lingering sunlight.

The next morning all arose late, and at a hurried breakfast Manny spilled an entire cup of coffee over his suit—with cream and sugar. It was the only suit he had with him. He rushed to a men's shop, picked out a suit. It had to be altered. Bloch said he must be out of there in 20 minutes. Impossible, unheard of, he was told. Then he told them who he was and why he must leave the shop at 11:45. One tailor worked on one trouser leg, another on the other leg, and it was done.

"The minute we saw the faces of the justices it was obvious the stay was vacated," Miss Agrin said. The *Times* described them: "The justices looked grim as they ascended the bench. Their expressions indicated that the conferences at which the decision was hammered out might have been strenuous, perhaps bitter. . . ."

At 12:02 Justice Vinson "in scarcely audible tones announced the stay was vacated and 'further proceedings are unwarranted,'" reported the *Daily Worker*. It was "greeted in stunned silence by spectators who packed the marble columned courtroom."

Reading of the various Justices' opinions continued until 1 p.m. Only Black and Douglas dissented. Frankfurter's short statement that he neither concurred nor dissented but felt the stay should not be disposed of until the court had more time to study, was read. On June 22 he issued a lengthy document headed "Mr. Justice Frankfurter Dissenting."

Both Black and Douglas delivered their opinions in emotion-charged tones which veteran reporters found unprecedented. Douglas at the end declared, "Before the present argument I knew only that the question [the new point on which he based his stay] was serious and substantial. Now I am sure of the answer. I know deep in my heart that I am right on the law. Knowing that, my duty is clear."

Black came to the point early. "It is argued that the court is not asked to 'act with unseemly haste to avoid postponement of a scheduled execution.'

"I do not agree. . . ." He said he had found no statute or rule "which permits the full court to set aside a mere temporary stay entered by a justice in obedience to his statutory obligations." He quoted the two statutes cited by the government and said flatly:

"Neither statute authorizes the court's action."

Douglas said at one point, "A suggestion is made that the question comes too late. . . . But the question of an unlawful sentence is never barred."

(Frankfurter in his opinion released the next week said he had studied further and now was convinced Douglas was right in granting the stay. He said 12 waking hours was not time enough to dig out and assess legislative material.

("To be writing an opinion in a case affecting two lives after the curtain has been rung down upon them has the appearance of pathetic futility," wrote Justice Frankfurter, to whom the class annual of the class of 1939, City College of New York, of which Julius Rosenberg was a member, was dedicated. "But history also has its claims.")

The majority opinion, unsigned but written by Jackson, contained a final paragraph which some observers felt constituted what certain justices hoped would influence the President, and others felt was merely a buck-passing artifice. It read: "Vacating this stay is not to be construed as indorsing the wisdom or appropriateness to this case of a death sentence. That sentence, however, is permitted by law and . . . is therefore not within this court's power of revision. . . ."

Justice Frankfurter, in his belated opinion, felt that to declare that raising the new point of law was a last-minute effort, was "to allow . . . irrelevancies to enter mind" and "tends to bend the judicial judgment in a false direction." The majority decision said, "It is obvious that an attempt to prosecute under the later [Atomic Energy Act] act would in all probability fail." This should not have been the issue in a matter where death was only a few hours away, observers said.

After the opinions were read Bloch made a motion for a stay to afford counsel time to seek clemency proceedings at the White House. The justices retired, and shortly denied it, Black alone dissenting.

The *Times*, reporting on their return to the courtroom, said: "The nine black robed jurists looked even more grim as they announced their final rulings." A Court Crier announced that the special term called on application of the Attorney General to consider the

Justice Douglas' order was adjourned. The jurists silently turned away, to return Oct. 5.

Miss Agrin said the lawyers saw Clerk Willey leave the courtroom crying. Then Manny turned to the others and said quietly that they had a long hard day ahead, suggested they might do well to get some coffee downstairs. In the corridors, among the stricken-faced friends who crowded up to Manny, was Helen Sobell, wife of Morton Sobell, convicted as a "co-conspirator," now serving 30 years in Alcatraz. Manny said to her gently, "Yes, Helen?" Helen Sobell asked dazedly, "What is it? What happens now? You mean it's all over, it's finished?" The woman lawyer described Mrs. Sobell's face as "a picture of eternal grief."

Over coffee downstairs, they tried to go on as if it were not all over. Bloch on returning from Sing Sing three days earlier had turned over to Daniel Lyons, pardon attorney, the clemency petition. Lyons, by law, was not permitted to send it to the White House until all court action ended. By this time, Manny was saying to his fellow lawyers, it could be on the President's desk. Just then newspaper men rushed into the cafeteria, headed to their table and broke the news. Eisenhower had denied clemency. It was scarcely half an hour after the court denied the second request for a stay to allow time to take the clemency appeal to the White House.

The lawyers went back to the counsel room. Bloch wrote out a telegram to the President, signed by him, Finerty and Sharp, seeking an oral hearing on clemency, and quoting from the dissents, noting the Supreme Court "never reviewed or affirmed propriety of Rosenberg verdict." The *Times* reported next day it was received by Bernard Shanley, special counsel to Eisenhower, and transmitted to the Department of Justice.

The lawyers then began trying to see the different justices—Burton, Black, Frankfurter, Jackson. "I don't remember half the motions that were made," Miss Agrin said, leaning her head wearily on her hand. "Manny wrote them off on pages of a yellow pad, in pencil. Clerk Willey would take them to the different justices. The telephone was ours for outgoing calls—unheard of until then. The clerk and his assistants were running like crazy. But they were all futile efforts."

Meanwhile Bloch called the press in and read aloud Ethel's letter

to the President. "A man from a nationally known magazine walked out crying. A woman reporter said, 'Jesus, what a day. And it isn't half over.'

"It must have been about 4 o'clock when we got word from the reporters that the Attorney General had decided not to violate the Jewish Sabbath,' which begins at sundown Friday. Some of the press assumed this meant it would be put off until Saturday night. Manny decided to take no chances on this cryptic message. He put in a call to Warden Wilfred L. Denno at Sing Sing. The warden told Manny it wasn't decided definitely but that probably the execution would be held before sundown instead of the scheduled 11 o'clock—that day, Friday."

In the full knowledge of just how much studying of the carefully documented clemency petition Eisenhower could have done, and filled with bitterness over Brownell's contemptuous trickery, Brownell's almost audible snicker and the almost audible words, oh, no, we won't desecrate the Jewish Sabbath, we'll burn 'em *before* sundown, Bloch stood on the Court House steps and exploded to reporters.

He condemned the action as "barbaric, akin to what the Nazis did." He said Eisenhower's quick rejection of a clemency petition without even a semblance of a hearing smacked of "military dictatorship."

"I don't know what animals I'm dealing with," said the usually composed Manny. Apparently anger and disgust flooded his soul at the thought of their week-long waiting, their reasonable pleas, Ethel and Julie rising after each new defeat to hope again, Ethel's own earnest letter of pleading, while Brownell's crass No—talk or burn, was to triumph after all. "But that they are animals" he continued, "I am convinced. That's my personal opinion, and I want the whole world to know it. I believe I'm talking for all decent people the length and breadth of the world."

Just before he uttered his much-quoted words, Bloch had slipped away to the basement of the courthouse and put in another call to Sing Sing. The reporters had followed him, however, and pressed against the phone booth from which he called. He seemed oblivious to them, said Miss Agrin, who was in the booth with him, as he talked to the warden and asked to speak to U.S. Marshall William A. Carroll. She told of the lawyer's words:

"He reached Carroll. 'Please take a message in to Julie and Ethel,' he told Carroll. 'Tell them I did the best I could for them. Tell them I respect and admire them. Tell them I love them. And so does the whole world.' Then his voice broke."

Leaving the Court House with Manny, they hailed a cab and sped toward the White House. Gloria Agrin breathed more easily for one reason. Knowing Manny's determination to be with Ethel and Julie should they have to die in the electric chair, and having heard him ask the warden about planes and timing before he reached Carroll, she set about persuading him that the last possible plane had left, as they walked out to the courthouse steps. With his directions to the taxi driver she felt sure he had given up the plan. At the time neither he nor she knew he had any heart ailment, but she felt he was close to the breaking point and should be kept from witnessing the monstrous act.

It was 6:15 when they arrived at the White House. Pickets broke into cheers. "Corp. William J. McCarthy of the White House police refused to let him enter the grounds," reported the *Times*. It added that when he asked to use a phone in the police box at the gate to call Sherman Adams, assistant to the President, or James C. Haggerty, press secretary, to ask for an appointment, he was told to use a phone down the street. To the guards at the gate Bloch gave his precious document, Ethel's letter to the President, and a copy of the majority decision of the court, hoping they would reach the President. Glancing at the marchers, who with set faces disregarded the gathering police and a band of hoodlum fascists taunting them, Bloch and Gloria turned away.

Back at the Statler, Bloch called the White House. It was 7:20. Gloria let reporters into the room, limiting their number to about seven. Others waited outside in the corridor. Bloch could not obtain an answer from the White House switchboard. Newspapermen kept urging, "Try again, please, Mr. Bloch." Finally he reached Murray Snyder, assistant White House press secretary.

Manny said he wanted to ascertain whether the copy of the court decision and the letter from Ethel Rosenberg reached the President.

"It is not our business to 'ascertain,'" he was told.

"For Christ's sake," Manny replied, "people are going to die. You can make it your business."

Manny then made one last call. It was to Bedell Smith of the State Department. Maybe he would care about American prestige abroad. Smith was reported "unavailable."

"It was then 10 minutes before 8 o'clock," Gloria Agrin said, in her quiet, direct way, her expressive dark eyes clouded over with pain, her hand pushing at her forehead, as if vainly pushing back the memory she would live with all her life. "For the first time in the three years I had worked with Manny, there suddenly was nothing to do for Ethel and Julie.

"We looked at each other, terrified for a moment, each trying desperately to think of something for the other to do. But there was nothing.

"Manny asked the press would they please leave us alone for a little while. One woman Washington correspondent was crying openly. Of those in the room with us, all were on our side by this time."

Behind the closed door, Manny and Gloria and Prof. Sharp sat together. In New York, 10,000 people stood together and wept together in Seventeenth Street, while a blood-red sun sank behind them. And in a small white bungalow in Toms River, a lonely little boy of 10, mature beyond his years, kept the news from his brother Robby. By accident Michael, listening to a television broadcast of a ball game, had heard another announcement. That was at 3 p.m., when a bulletin interrupted the ball game recital. It said the warden at Sing Sing had told reporters to be on hand before 7 p.m. From the next room the stricken Mrs. Bach saw the tall slender boy slump in his chair, heard him say: "That's it. That's it. Goodbye. Goodbye." In Paris, *l'Humanité* was going to press with the banner line, "May Their Killers Forever Be Cursed." Demonstrations were beginning which would claim the life of a 19-year-old youth killed by French police guarding the American Embassy. In Italy, public service workers were preparing to strike in a 15-minute demonstration on the morrow—and did. In Italy, too, workers were making large signs reading, "They have murdered the Rosenbergs." These were put up during the night in "many of the busiest street corners in all Italian cities," reported the *Times*. In Tel Aviv, Israel, where no newspapers are published on the Sabbath, a crowd stood outside the embassy appealing for clemency, only to be dispersed by police at midnight.

EXHIBIT 4
[Attached to foregoing Affidavit of Marshall Perlin]

Chart of book sources of THE IMPLOSION CONSPIRACY by Louis Nizer

NIZER	WEXLEY	ROOT	GARDNER
15	105, 104,106	9, 50, 43	
16	105, 106		
17	106, 107	54, 55	
18	81, 109	25, 28, 29, 30, 37, 194	
19	199	(31, 32, 33, 34, 35 (37	
20	81	35-38, 31	
21		38, 39	———
22	108	58, 59, 60, 69,	
	108	62	
23	218, 126-7, 108, 109 110	61, 62, 71, 72, 74 75, 69-70, 76	
24	109	75	
43-44		270-271	
47	325, 516		
57	176		
93	82	85	
94	85-86, 23	85	
95	35		
101	86	86	
110	338, 339		
119	331, 333 (?)		
120	333, 334 (?)		
160	23		
164	50		
165	50		

NIZER	WEXLEY	ROOT	GARDNER
195	579-80 (fn)		
196-201	243-5 575-9 544-5		98
222	489-93		
246	573-4(?)		
278	579-80, 563, 564, 568	198-199	
367-368	614, 610, 611, 143, 598-604, 620-21, 616, 618, 619	216-217	92, 93
368			78
369			100
370		221	100
395-396		223	100
399		223	
400		224	100
404		252	
404-6	493, 494	252-254	
407	458, 486	255	
417		229, 278	
418		229, 230, 231	
419		231	
420		232-35	
421		237-39 256-257	
422		257, 236, 290,	
423	626-7	236, 258, 259, 15, 16 283	
425		261	
429		14, 264	
430		13	110-111
433			102
435			102

NIZER	WEXLEY	ROOT	GARDNER
439			114
441			111
443			112, 113
447			113
449-50			113
453		15, 236	
454		259, 15-17 257, 21-22	115
455		15, 16, 21	
461		14, 17, 18, 264 266	
462		264	117
463		264	
464-65		264-65	
466		265-266	
467		266	119-20
474		20-22	122
475			124
476			123-4
477	627		
478	625, 626-29	268-69, & 71	
479	629	270-272	
480		270-273	
481	632, 634	273-274	
482	629	270, 274	
483		20	
484		284	
485		275-282	
488	69, 198	120, 281	
495		282-3	104-6

EXHIBIT 5
[Attached to foregoing Affidavit of Marshall Perlin]

Sample handwritten manuscript pages of Louis Nizer from motion picture script

47b

Ethel Rosenberg.
-You have not added to your sins by committing perjury. You confessed and told a complete story and it has been of great assistance to the Government

(1634) It is the judgment of the Court that I shall follow the recommendation of the Government and sentence you to 15 years in prison.

(He is led away. The ~~Court~~ Judge descends from the bench and turns into his chambers immediately to the right. There, his attendant and legal clerk, helps him remove his judicial gown)

Clerk: You look exhausted Judge.

Judge: I am. I haven't had 10 hours sleep in the last ~~week~~ two days. Hardest of all was giving the death sentence. It was the most difficult thing I have ever had to do in my life. I searched my ~~soul~~ soul. At This Saturday. I went to synagogue to pray and seek guidance. I could come to no other decision.

Well, when you have done your duty, your mind is clear.

The Clerk: ~~Get~~ Get some rest, Judge

5.

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(Scene shifts to the conference room to next to the cells, beneath the courtroom. This is where counsel may confer with their clients, before they are taken ~~back~~ upstairs. U. S. Marshall William Carroll has permitted the Rosenbergs and Sobell, along with Mrs. Sobell and their attorneys to have lunch here. Morton and Helen Sobell are holding hands. ~~The~~ The Rosenbergs sit closely to each other & to provide as much contact of their bodies as possible. ~~They have gnawed down, nibbling~~ They ~~look~~ are red eyed and in silent despair. The mood is funereal. They nibble at their food, but find it difficult to swallow.

The lawyers are giving them the usual comfort in the face of catastrophe.

over 2

Post 220

Rosenberg's Attorney: Remember this is only the first round. We have an excellent chance - an excellent chance on appeal.

Rosenberg: Please somebody call my mother and try

Sobell's Attorney (Phillips): I have practiced law for more than 50 years. I have never seen a clearer

break the news to her gently.

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reversible record. Keep your courage up. These verdicts will never stand.

Rosenberg Attney (Block): We have a fine Circuit Court of Appeals. They are not only brilliant judges who will precise the many legal errors made during this trial, but there sits on it Jerome Frank, a liberal judge, sensitive to the rights of the individual. He will never stand for the prejudicial atmosphere which railroaded all of you.

(The mood brightens under these verbal ministrations

Sobell's Attey: As a matter of fact he is one of few Judges who doesn't believe in juries. You know he has written a book on this unreliability—

Ethel Rosenberg: ~~Do you think they will permit us to see the children?~~ Do you think they will permit us to see the children? ~~We~~ They are old enough to understand. Tell Texie to have someone talk to them who can explain our innocence, and that we'll be back

~~Rosenberg~~ Rosenberg's Attorney (Block) We have already taken care of it. Don't

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Don't blame yourself. You did everything you could. It is not your fault. With the way things are in this ~~world~~ country to-day we would have been convicted if there was no testimony.

Bloch: (Looks up gratefully at her, and squeezes her hand in appreciation.)

The U.S. Marshall directs that Sobell be taken back to the Tombs, and that his wife should leave. ~~The~~ Then places Julius and Ethel Rosenberg in two separate but adjoining cells near the conference room for the night. One of the marshals tells Julius that they are waiting for instructions from Washington whether to transfer them immediately to Sing Sing.

Julius: (Alarmed that Ethel may hear this, calls out to her in the next cell)

Ethel, don't be scared of some clown tells you we may be taken to the death house tonight. Everything will be all right. They won't do it.

Ethel: (To give him assurance, begins to sing. The marshals and other prisoners are startled). She sings

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(This is the day he called names)

"Un Bel Di ~~Vedremo~~ Vedremo" from ~~Madam~~ Puccini's Madame Butterfly, a message of hope. She sings in a coloratura small voice, but in good pitch and with professional competence.

When she finishes Julius calls out, "Ethel, The other one"

She then sings "Ah, Dolce Notte! Quando Stelle!" from the same opera.

Ethel: Are you all right dear?

Julius: Fine. Sing some more.

Ethel: (Sings "Good night Irene")

Julius: (as if he has to respond, sings "The Battle Hymn of the Republic". He is no singer! His voice is bad and he has trouble reaching notes, but the guards and other prisoners are moved by the communication ~~by~~ in his song)

(The next morning they are both taken to the House of Detention in a large prison van. ~~Here~~

Inside the van there is a ~~steel~~ mesh screen which separates men prisoners from women prisoners. ~~Outside~~ When the doors are locked it is pitch black. A negress who is in the woman's compartment, lights a about to light a cigarette. As the match lights, she sees Ethel and Julius flattened against the mesh screen frozen in an embrace. She quickly puts out the ~~match~~ light without lighting the cigarette. The van drives on in darkness.

Gardner 78

Scene Shifts to Sing Sing's ~~Dea~~ Isolated death cell of Ethel Rosenberg. Block is visiting her. She is unkempt, has no lipstick, & careless about her appearance.

Block: Ethel, I have good news. ~~I~~ Ours ~~just come for have just~~ ~~surprise~~ Julius' appeal has been filed, and

Oh, don't worry. I don't consider it an evil omen. There have been so few of us. I read that the only woman ever condemned to die by a Federal Court was Mary Surratt. She was hanged for her part in the Lincoln assassination. Good company, to be sure Manny?

Block: I would suggest you read less morbid material.

Ethel: Have you seen the children?

(reader 4) Block: Yes. They are getting on as well as can be expected. When do you want to see them?

Ethel: Not yet. It is 8 months now, but I will wait until Julius gets here. I do not want them to visit each of us separately. We will plan to see them together. You can help us arrange it can't you, so that the shock will be as little as possible.

Block: Of course. When Julius gets here, we can have a joint meeting once a week. Then we'll bring the children in while all of us are present

Ethel: Wonderful. Julius and I will have to prepare a

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campaign for them.

Block: ~~You~~ The real purpose of my visit is to cheer you up a bit. Look at you — no lipstick, hair all over the place. Come on, you have had so much courage up to now. Don't let up.

Ethel: Wait till Julius gets here. I'll doll up to kill.

Block: I'll ~~come~~ come back soon, and this time I will bring you the best present of all, a ~~passport to freedom~~ brief to the Circuit Court of Appeals. ~~It is a long~~ We have all worked like slaves to make it irrefutably persuasive. We present 25 ~~separate~~ separate legal points for reversal, and each of them has merit.

(1 250)

Ethel: I am dying to read it

(The awkwardness of the phrase dawns on them and they break into laughter)

Block: Watch your language, lady.

(Scene shifts to Detention House in New York. ~~Block~~ Julius ~~Rosenberg~~ is seated with his lawyers in a private

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apartment. Julius' sister also shares that apartment

They arrive at the gates of Sing Sing. A guard is there.

Bobby Michael (noisily) Aren't you going to frisk Michael and me?

Guard: Not necessary, kids.

Bobby Michael (Loud and insistently) You must frisk us. Frisk us!

Guard: (sheepishly) OK. (He touches their pockets)

(Bobby Michael (trailing) go in happily)

They are taken first to see their mother. It is before lunch. She has determined to show no terror and by her own calm diminish the impact on them.

But seeing them is too much.

JJ day last night ~~was~~ a radio commentator ~~reported~~ said that French President Auriol sent his ~~secret~~ plea for mercy. So did the Vatican. There are protests marches all over the world

Julius: It is wonderful. How fast all this has happened. ~~It~~ seems to have come over night. ~~It was foolish of me~~ to be discouraged by the amateurish beginnings. I remember when Dr Fineberg of the American Jewish Committee attacked us, and reported that Helen Sobell, spoke to a small group at Far Rockaway and said that "the Rosenbergs could save their own skins by talking, but they will never betray their friends." ~~over~~

S. Andhil Fineberg's Book "The Rosenberg Case"

Post p. 39

P. 413 Start here

(He resorts to Yiddish to express his contempt for her stupidity)

A ~~dirty~~ kike ("cloggd head" is ~~idiomatically~~ idiomatically "great brain")

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that the United States has executed two innocent people and let the guilty one (Ruth Greenglass) go completely free? And, remember, somewhere there is a representative of the U.S.S.R. who knows what the facts are."

He also attacked the unequal sentences imposed for the same crime.

N.Y. Times Jan 3, 1953

Root 760

The letter to the press came on Jan. 3, 1953

(X)

Root 762

The American Civil Liberties Union would say that there was no civil liberty issues in our case, and that the death sentence was not so disproportionate for the crime as to raise such an issue

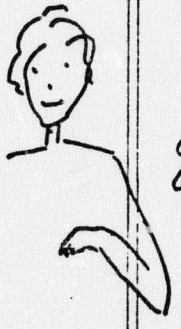
(Note: Statement issued by National Board of Directors of the American Civil Liberties Union)

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Ethel: Well, we have always known it. ~~& [illegible]~~ The Party is right. If you have Liberals as friends you don't need enemies.

Julius: I hope the lawyers come soon. I would like to talk to them about the steps still available to us, now that the ~~Court of Appeals has [illegible] again~~ Kaufman's refusal to grant a new trial because of the console table ~~[illegible] First Supreme Court~~ has been upheld by the Court of Appeals and the Supreme Court.

Ethel, dear. Let's be frank. I am afraid time is running out on us.



Her eyes ablaze with Joan of Arc fury.

Ethel: Never! There will be ~~revolutions~~ riots all over the world if they try to kill us. And if they do, then we must accept our fate. We will have fulfilled our mission.

& This argument was never made before. I am not at all sure that it has merit. But look, gentlemen, I have my car all packed ready to leave for the West at 7 o'clock tomorrow morning. ~~I am~~

Perhaps you can present your request to one ~~of Justice Black~~ of the other Justices. ~~Justice Black~~

Gardner (110)

Marshall: We have learned that Justice Black has gone to the hospital for some minor surgery. He left word that he would entertain no petitions and even mentioned to our case by name.

425 None of the other Justices are available. They left immediately after Court adjourned for the summer.

Your Honor there are two lives at stake. We also have new evidence.

562

This is necessary, because if Justice Douglas should deny the stay there will be only 24 hours in which to make a last minute appeal for commutation to Pres. Eisenhower. The petition must be read

Gardner (111) (112)

It is 3 A.M. Block has fallen asleep on a cot. They wake him to announce that the petition is ready, and plane connections for Ossining have been made.

He has also directed that the children meet him so that he can take them to see ~~Ethel and~~ their parents for what may be the last time. He dashes off on his mission.)

(Scene shifts to a lawyer's conference room in Sing Sing. There is the long table separating Julius and Ethel, each handcuffed and with a guard and matron behind them. It is Tuesday morning, June 6th, two days before the execution, the date of which has already been changed 2 times) Block enters with the two children. They are

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EXHIBIT 6
[Attached to foregoing Affidavit of Marshall Perlin]

Copy of letter from Gloria Agrin Josephson to Otto Preminger dated November 3, 1972

November 3, 1972

Otto Preminger
Sigma Productions
711 Fifth Avenue
New York, New York 10022

Att: Bud Rosenthal
Re: The Implosion Conspiracy

Dear Bud:

As you know, I have not, in any of our discussions, tried to influence your opinions on guilt or innocence. We both understand, I believe, that our positions diverge, in that I stand on the Rosenbergs' innocence, whereas, you hold an open mind on the question, with, perhaps, a feeling of distaste for the death penalty. In discussing the script, I do not intend to alter this stand-off. On the other hand, I do hope that some of my remarks may be taken kindly enough to preserve an image of history, which is eye-witness, from the ravages of "fictionalization." I would certainly hope that, where the dramatization may give offense to people still living and where a script alteration would not change a point of view, some practical consideration may be given to my suggestions. I apologize, in advance, that some of the points I am going to make may seem small; I assure you that, toward the end, I shall advance one large enough to overcome the deficit.

1. On page 122, you have Alexander saying: "This case will ruin your marriage," and Manny replying, "That's the best news I've had all week." Dina Bloch Rachalin, Manny's former wife, is still alive. Both their marriage and its dissolution were civil and civilized, with both parties being far too sensitive to dismiss 25 years of married life with a wise crack. I do not think that Mrs. Rachalin should have to live with that remark, as a characterization of her relationship with Manny, for the balance of her life and accept the opprobrium it most certainly will carry, among her friends, family and associates.

2. On page 47, you have Alexander pouring a glass of water on

somebody's head. That dignified little old man would turn over in his grave, as all offended ghosts do, at such a depiction of his conduct. It is really unjust to his memory to have him immortalized in this way. A reaction of "more in sorrow than in anger" would have been typical of him and, while less dramatic, would be closer to the truth.

3. All of the material, from p. 159 ff., relating to Farmer and Marshall is just plain not true, to the extent that it cannot even be considered a fictionalization. Aside from the fact that they never took a drink of water with Manny, let alone champagne, they never:

a. asked Manny whether they might present their motion, nor did he refuse them (p. 159);

b. worked with or argued their motion with Manny (p. 161);

c. took directions from Manny (p. 179).

Moreover, Farmer and Marshall will be the first to deny it -- loudly, vociferously and publicly. They were confirmed in their antipathy to Bloch, were insistent on the independence of their efforts and would consider it sk[illegible] off their backs if the relationship were otherwise portrayed.

It is possible that Nizer confused Fykes Farmer with John F. Finerty -- he seemed to over the phone this summer -- who did join Bloch's staff and was with him in Washington to the end.

4. A few matters of fact:

a. Alexander was never in Washington.

b. The Supreme Court was never picketed. It was always the White House.

c. Manny never ate Chinese food; nor would he fling a brief case, which he never carried -- except, I suppose, in the movies.

5. Query: Would David Greenglass ever be sitting in the spectator's section, since he was a prisoner, not out on bail?

6. The facts about the childrens' visit to Sing Sing are as follows: The Rosenbergs' hesitation to see the boys, under prison circumstances, was overcome, after consultation, by advice from Dr. Frederic Wertham. They acceded to his point of view that it was healthier for the children to know for a fact that they were alive, under no matter what circumstances, rather than let their immature imaginations run rampant.

7. I should like to state, at least for the record:

a. The Blochs never accused the Rosenbergs of not telling them

the truth (p.22).

b. Never were the Blochs accused by the Rosenbergs of "wanting out," nor were they offered "out." (p. 23)

c. Bloch never accused himself of mishandling the case, in general, nor, in particular, for having the Rosenbergs take the 5th. (p.119)

d. Alexander never urged Manny to give up the case (p. 126), nor was it in anybody's mind that he would.

8. I find utterly offensive the entire so-called sex incident (p. 128) and its consequences. Whether or not it is true, and I doubt it, it is so far from the essence of those people, whether guilty or innocent, that it is shameful that they should be burdened, in history, with this additional cross -- or that their children should have to peep through that keyhole. Maybe it sells movies, but can it not, just for a change, be assumed, without being displayed, that all people have an interest in sex, and go on from there?

9. In relation to how the sentencing is handled (pp. 113 ff), you depart very radically from your intended even-handedness, strangely enough in an area in which you agree there was excessiveness. Kaufman's remarks give the Government's rationale as well as his own. Why not one word from Bloch? Twice, once on sentencing and again on motion for reduction of sentence (both in the record), he delivered not only impassioned, but rational pleas against the death penalty in the case. For all that there is an effort to give both sides of the story in the script, the sentencing, as presented with no one saying "nay," becomes a most emphatic summation of guilt, which renders all of the preceding "even-handedness" null.

If you will permit me, I would now like to make a few comments that are out of my professional province and are really none of my business. They concern my over all impression of the script. It is most undramatic. I have tried to analyze why it seems this way to me. Two broad reasons occur to me.

1. Your characters are stick figures.

You cannot hate them; you cannot love them; you cannot understand them; and, in the end, you could not care less whether they lived or died.

Empathy for them is not created for them by such a sob-sister device as a meeting with their children in the death house or by the revulsion, which can be anticipated, at seeing them actually fry. Nor is antipathy to them a simple consequence of writing either COMMUNISM or ATOM BOMB in capital letters.

What were these people before they became a "case?" How did they

live? Were they good or evil? Were they kind or mean? Were they likeable or distasteful? What did they do for kicks other than get themselves involved in spy trials? There must have been some source in them of the strain of sympathy for them that moved, with great emotion, thousands upon thousands of people, throughout the world, to march for them, plead for them and, in the end, weep for them.

2. The time sequences are jumbled. Three years, with three separate appeals through the courts to the USSC, are made to seem as one. This kaleidoscoping of time and events gives you no freedom to build either character, suspense, or growing excitement. To take a small example, on page 24, Ethel is made to remark to Manny and Alexander that she had thought they were her friends. How did they get to be "friends?" Almost a whole year had passed between the time Manny was first retained by the Rosenbergs and the trial, during which this incident occurred, time for a relationship to develop. The same holds true for Ethel's relationship with Helen Evans, unless it is understood that they spent almost two whole years together in the death house. This fault that occurs in relation to the building of character and relationships, applies as well to the development of the impact of the social forces upon the unfolding of the case, which forces were the matrix in which the case was set, in which it developed and which dictated its conclusion.

One final personal note: It was surprising, half amusing and half painful to see the lawyers come off like a bunch of cardboard Perry Masons, either gobbling and/or guzzling, hysterical with joy and/or sorrow, wisecracking, semi-literate, cut to fit the standard movie conception of counselors at law. Some day it would be nice to see attorneys given some depth and breadth of vision.

In conclusion, you have a right to assume that, if I am nothing else, I am frank. That frankness, however, I assure you, is without malice.

Sincerely,

GLORIA AGRIN JOSEPHSON

GAJ/m

EXHIBIT 7
[Attached to foregoing Affidavit of Marshall Perlin]

Affidavit of Richard Anderson Falk

AFFIDAVIT OF RICHARD ANDERSON FALK

State of New Jersey)
) SS.
County of Mercer)

I, Richard Anderson Falk, being duly sworn, deposes and says as follows:

1. I am currently serving as Albert G. Milbank Professor of International Law and Practice at Princeton University where I have been a member of the faculty since 1961. Prior to Princeton, I was a member of the faculty of the College of Law at Ohio State University, Columbus, Ohio for six years. In 1955 I was admitted to the Bar of the City of New York. My educational degrees are as follows: University of Pennsylvania, B.S. of Econ., 1952; Yale Law School, LLB, 1955; Harvard Law School, J.S.D., 1962.

2. My work over the past twenty years has been as a scholar and teacher. I have published more than 15 books and 100 articles in scholarly journals. Among my books I would mention The Status of Law in International Society, Princeton University Press, 1970; This Endangered Planet, Random House, 1971; The Role of Domestic Courts in the International Legal Order, Syracuse University Press, 1964. (See attached vita for more extensive listing of scholarly credentials.)

3. It is my principal judgment that The Implosion Conspiracy by Louis Nizer can lay no genuine or serious claim to being a work of scholarship. In any event, this work is of no importance to scholars working on the subject-matter it treats and cannot be regarded as a contribution to knowledge.

4. For one thing, The Implosion Conspiracy lacks the minimal outward, but indispensable, trappings of any serious scholarly work: it has no index or bibliography, and, especially for a work of this sort, possesses no system of citation. The most careful scholarly work on the Rosenberg trial is Invitation to an Inquest by Walter and Miriam Schneier and it is not even acknowledged as existing in Mr. Nizer's prefatory note where several other books are mentioned. The absence of citations is particularly serious for a work that claims to be scholarly or a contribution to knowledge. Not even page numbers are given for quotations taken from the trial transcript. There is no way for anyone else to check upon the accuracy or plausibility of Mr. Nizer's interpretations, and the whole tone of the text is such, that one is expected to read a highly partisan interpretation of the Rosenberg case as if it were a fictionalized account of a legal drama. In this regard, the origins of the manuscript as a commissioned movie script may help explain part of this difficulty.

5. A legal scholar or historian is, above all else, someone who argues and supports his interpretations of a subject-matter with evidence and reasoning that can be affirmed or disaffirmed by others. Mr. Nizer consistently fails to do this. He does not come to terms with the formidable arguments advanced in scholarly works against many aspects of the prosecution case that are developed in other books especially the book by the Schneiers. We are apparently expected to take on faith everything that Mr. Nizer sets forth. Such a technique may be appropriate for propaganda or fiction, but it is totally inconsistent with any serious pretense of scholarly status.

6. To sustain a scholarly claim here would have required a real consideration of the credibility of the prosecution witnesses, especially in view of the doubts raised in other works. This, Mr. Nizer has consistently failed to do. Hence, no reader is helped to form a more correct judgment about the Rosenberg controversy, but only to succumb or not to Mr. Nizer's interpretation of the events.

7. In conclusion, Mr. Nizer's book fails to bring evidence, documentation, nor reasoning to bear that would enable a reader to gain any kind of objective understanding as to what actually happened or as to the controversy among scholars about what took place. In my view, the book by Mr. Nizer must be regarded as, at most, a work of entertainment, that it is utterly lacking in scholarly value, and makes no contribution to our knowledge of the subject under consideration. I cannot imagine serious students of the Rosenberg trial ever being expected to consult the Nizer book in the course of research on the case or its significance. Furthermore, I cannot imagine a library collecting books for scholars bothering to buy The Implosion Conspiracy except for the sake of completeness. Finally, I cannot imagine another scholar relying on Nizer's interpretation to support his position even if he reached similar conclusions. In short, it would be highly inappropriate to grant Louis Nizer or The Implosion Conspiracy any legal benefits that normally accrue to scholars or works of scholarship.

Richard A. Falk

Subscribed and sworn to before me
this 24th day of March, 1975

Lucille Orr Crooks

LUCILLE ORR CROOKS
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires October 28, 1979

December 1974

Richard A. Falk

Vita

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Date and Place of Birth: New York City, November 13, 1930.

Marital Status: Married; 3 sons.

Education:

B.S. (economics), Wharton School, University of Pennsylvania, 1952
LL.B., Yale Law School, 1955
J.S.D., Harvard University, 1962

Experience:

1955-61	Assistant, then Associate Professor, College of Law, Ohio State University
1956	Admitted to New York Bar
1958-59	Ford Foundation Fellow, Harvard Law School
1961-62	Visiting Associate Professor, Princeton University
1962-65	Associate Professor of International Law, Princeton University
1965	McCosh Faculty Fellow, Princeton University
1965	Professor (Albert G. Milbank Professor of International Law and Practice), Princeton University
1968-69	Fellow, Center for Advanced Study in the Behavioral Sciences, Stanford, California
1974	Senior Fellow, Institute for World Order, New York, N. Y.

Principal Professional Activities:

Vice President, American Society of International Law (1969-71) (1974-75)
Research Director, North American Team, World Order Models Project (1968-)
Co-Director, Project on the Future of the International Legal Order (1966-)
Editorial Board, Foreign Policy Magazine (1970-), American Journal of International Law (1961-), Alternatives (1974-)
Chairman, Consultative Council, Lawyers' Committee on American Policy Toward Vietnam (1967-)
Member, Committee on the Environment, National Policy Council of the Democratic Party (1970-71)

Member, Executive Council, Federation of American Scientists (1969-71)
Member, Board of Directors, Foreign Policy Association (1969-72), Institute of World Order (1972-), National Parks and Conservation Association (1972-)
Member, Board of Trustees, Fund for Peace (1970-), Procedural Aspects of International Law Institute (1965-), Defense and Aid for South Africa (1973-)

Publications

Books:

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The Role of Domestic Courts in the International Legal Order, 184 pp., Syracuse University Press, 1964.
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EXHIBIT 8
[Attached to foregoing Affidavit of Marshall Perlin]

Affidavit of Noam Chomsky

DEPARTMENT OF FOREIGN LITERATURES AND LINGUISTICS

MASSACHUSETTS INSTITUTE OF TECHNOLOGY

CAMBRIDGE, MASSACHUSETTS 02139

4 March 1975

Affidavit of Noam Chomsky

I am Ferrari P. Ward Professor of Foreign Literatures and Linguistics, Massachusetts Institute of Technology, Cambridge, Mass. My professional work is in three areas: (1) linguistics and philosophy of language; (2) intellectual history; (3) international affairs and social and political theory. I teach, do research, and have published books and articles in all three of these domains. Some representative books are: Syntactic Structures (1957); Aspects of the Theory of Syntax (1965); Cartesian Linguistics: a Chapter in the History of Rationalist Thought (1966); Language and Mind (1968); American Power and the New Mandarins: Historical and Political Essays (1969); Problems of Knowledge and Freedom: the Russell Lectures (1971); For Reasons of State (1973); Peace in the Middle East? Reflections on Justice and Nationhood (1974); Reflections on Language (in press).

I have been on the faculty of MIT since 1955, and have lectured on these topics in many universities in the United States and abroad.

I have been asked to read and comment on Louis Nizer's The Implosion Conspiracy (Fawcett, 1973), with regard to its status as "a work of history that contributes to knowledge".

I have read the book carefully. Having no expert knowledge of the matters discussed in the book, I will not attempt to assess its factual accuracy. In the present instance, such an assessment is not required to respond to the question presented. The book cannot possibly be regarded as a "work of history that contributes to knowledge." It belongs to a different literary genre entirely; namely, it is a historical novel. Apart from the trial record and the Rosenberg letters, virtually no documentary evidence or source material is cited. Several books are listed in a general "acknowledgement" (one a novel), but there is no indication in the text as to whether or how they were used. Occasionally, sources are cited, but on peripheral matters (e.g., p. 469, where S.A. Fineberg's The Rosenberg Case is cited with regard to a public meeting; p. 471, where a letter by Harold Urey is quoted, with reference to the legality of the decision and the political consequences of the sentence). On matters central to Nizer's account, there is no documentation apart from the trial record. Thus it is quite impossible to evaluate the greater part of his analysis or conclusions, since no evidence is presented. His narrative is presented in the style of a factual record, but the reader has no way of knowing on what evidence, if any, the narrative is based.

In fact, it is obvious by internal evidence that much of the narrative is fiction. Thus, the author repeatedly resorts to the device of dialogue, with substantial use of quoted material, where he could hardly have any detailed information as to what was said, and certainly not direct quotes. Among the examples are dialogues between: the Rosenbergs and their parents, defendants in private, Gold and Yakovlev, lawyers in private conference, defendants and lawyers. Even telephone calls are reported in quoted dialogue. The author even reports, as fact, the state of mind and inner thoughts of participants in these invented discussions. For example, referring to Emanuel Bloch, Nizer reports that during the trial, "even when he had some hours to rest, he was tossed about by his vivid mind filled with terrible fears" (p. 68); the Rosenberg's "knew subconsciously, at least, that there was some validity to the accusation that they had failed their children even before their arrest" (p. 411); the defendants' "misery turned to the elation of martyrdom" (p. 465); Michael's "mind was filled with vivid images..." (p. 483); etc. Conceivably, Nizer has some factual basis for some of these assertions; one cannot know, since he presents none. This is not the stuff of history, but of fiction.

Furthermore, interspersed among the sections presented in dialogue form there are narrative accounts of events that Nizer did not witness, including detailed descriptions of how people reacted, their appearance, and so on (including their words and private thoughts). On some occasions, the author asserts that his narrative is a dramatic depiction of material presented in the trial record. This may or may not be true. In some cases, it is hardly likely that any direct evidence is available, given tha nature of the incidents described. But the point is that there is no way of distinguishing possible fact from the author's fancy, since no evidence is presented and there are no citations or references to any sources (apart from the trial record, on occasion). These narrative sections too contain quoted dialogue. The reader can only conclude, from the extensive use of this device, that none of the material in the book, apart from the cited trial record, can be regarded as factual, since evidently some represents the free flow of the author's imagination, and these sections are not distinguished from others in any way.

For these reasons, the work cannot be considered as a work of history at all, hence not as "a work of history that contributes to knowledge." Thus, it would be quite improper -- indeed, unthinkable -- for a historian, a political analyst, or a journalist, to use this book as a source or to rely on it for information or analysis. Though there may be some factual elements interwoven into the author's account, it is impossible to determine where this is the case, or what the facts may be. The work must be regarded as a novel, or perhaps a first sketch for a dramatic presentation (the author indicates at several points that this is what he may have in mind), nothing more.

Even historical novels can be judged in terms of their faithfulness to known fact or the concern of the author to present an interpretation

of actions and events that is fair and objective. On this score too, Nizer's book is not very impressive. Even in the general acknowledgement, studies that do make use of documentary evidence in accordance with the normal canons of scholarship are not cited as sources; e.g., Walter and Miriam Schneir, Invitation to an Inquest, 1965 (revised, 1968). It is difficult to see how Nizer could have missed this book, since it was published by his own original publisher (Doubleday), and is, to my knowledge, the most comprehensive recent work on the subject. Quite generally, it is evident that Nizer made no effort to use available secondary literature, and as already noted, makes little use of primary sources, apart from the trial record.

No less significant is the highly selective way in which Nizer employs his literary device of invented dialogue and narrative. When the trial record is quoted directly, it is obvious to the reader that what is presented is the assertions and claims of the witness. On the other hand, when the author presents narrative and invented dialogue, allegedly expressing the content of testimony, the impression is conveyed that this is a factual record. Thus, the narrative contains alleged statements of fact: Julius did such-and-such, etc. It contains quoted dialogue, references to how people behaved and reacted, what they thought, what their intentions were, and so on. The narrative has the form of a historical record, an account of what in fact happened and took place.

Noting this distinction, it is interesting to observe that the literary device of narrative and invented dialogue is used, virtually without exception, in the presentation of the testimony of prosecution witnesses. In chapter 7, dealing with Elitcher's testimony, the author switches from the Court record to narrative with invented dialogue (p. 73). Later in the chapter, Julius Rosenberg's version of the same events is presented. Here there is no narrative, no invented dialogue, but only citation of the Court record with interspersed material of the form: "Rosenberg testified that..."; "Rosenberg denied that..."; etc. Chapter 8, dealing with David Greenglass's testimony, begins at once with extensive narrative and dialogue, in the form of a factual record. Ruth Greenglass's confirmatory testimony is then introduced, in the form of a dialogue, obviously invented, with narrative comments interspersed. The author then returns to David Greenglass's testimony, proceeding in the same way with invented dialogue and allegedly factual narrative comments ("Julius did so"; "After twenty minutes of questioning in the crawling car, it returned to the original scene where the Russian was taken aboard" (p. 97); etc.). The chapter continues in this way. The following chapter begins with a five-and-one-half page invented narrative with dialogue, after which comes the statement: "Having drawn all this out of Greenglass,..." (p. 120).

Chapter 10 presents Julius Rosenberg's contrary testimony, also in narrative form.

Chapter 12 reports Ruth Greenglass's testimony, also substantially

in narrative form, with contrary testimony by the Rosenbergs presented in the same manner. Gold's testimony (chapter 15) is largely presented in the same style, this time, with no counter-testimony. So matters continue through the prosecution's case.

In contrast, consider chapters 20-22 dealing with the Rosenberg's testimony. Here there is no invented dialogue, and no extensive narrative, as in the presentation of the prosecution's case. The extensive use of the device of narrative and dialogue begins on p. 316, as Nizer reports the testimony of prosecution witness Schneider. The section begins: "I reconstruct the events as he depicted them from the stand." Following this, there is a page of invented dialogue presented in the same format as used for the Court record, with interspersed narrative, the first use of this device in the text since presentation of prosecution testimony.

The preceding is a review of Nizer's use of a particular literary device, namely, narrative and invented dialogue in place of citation of testimony. It is clear that this device is primarily used in presentation of the prosecution's case. It is not used in the chapters dealing with the defense witnesses; in reference to them, the device is only used, and then marginally, in the context of prosecution testimony. In contrast, the device is used quite generally when the testimony of prosecution witnesses is presented and discussed. The effect on the reader who is unaware of what the author is doing may be considerable, since, as noted, the literary device of narrative and invented dialogue conveys the impression of a factual record, as distinct from mere assertion. Thus the impression is conveyed that the prosecution witnesses are presenting the facts as they occurred, while the defense witnesses are merely asserting that the facts are otherwise.

Consider again the question: Is Nizer's book a fair and honestly presented historical novel? My conclusion would be that it is not, as this analysis of his resort to the device of narrative and invented dialogue shows.

This is far from the only example of the author's bias. Repeatedly, he describes the defendants as committed to "a fanatical movement" (p. 28); as having "abandoned any discriminating judgment in their fanatical devotion to communism" (p. 35); as "fanatically active" (p. 110); as "fanatical" about their "credo" ("No fortress is less impenetrable than a closed mind"; p. 225); as "fanatical ideologists" (p. 398); etc. Their writings in prison are "self-serving inflammatory descriptions," "obviously for propaganda use" (p. 485; how does one expect people to react in the death cell?); "their stubborness...was for outside consumption" (p. 488); etc. No factual basis is presented for these accusations and allegations. They merely reflect the author's preconceptions, woven into the thread of his presentation. From such examples as these, which are numerous, one might conclude that the work is not really to be assigned to the genre of historical novels, as charitably suggested before, but should rather be considered simply as

a work of propaganda.

At times, the propaganda strikes me as rather vulgar. Consider the author's account of the relations between the Rosenbergs and their children. Presenting no shred of evidence, Nizer asserts that "their political fanaticism had deprived their children of the warmth and intimacy which they insisted would come to the world if their theories prevailed," though "Whatever failure of love there was with the children didn't affect theirs"; thus the children were "extremely difficult," uncontrollable, etc., a fact which "mystified" the parents (p. 35). Later, commenting on a fabricated dialogue between lawyers and the Rosenbergs in prison, Nizer explains Ethel's "special hurt" concerning the judge's comments about "how we let down the children." The reason, Nizer asserts, is that "an accusation that is even half true rankles and festers." The Rosenbergs "knew subconsciously" that there was some validity to the accusation; "They had failed their children even before their arrest" and "had not communicated [their love] sufficiently to Michael and Bobby to prevent their neurotic behavior". Nizer asks rhetorically: "Hadn't their intense activity for a better Communist world deprived their children of a better home?" etc., (p. 411-2). Here, Nizer attributes to Ethel Rosenberg certain statements and reactions, and then offers his contemptuous analysis of these alleged facts. No factual basis is laid for any of this.

To cite one more case, consider the author's treatment of the significance of the material that Greenglass delivered. He asserts that "the Rosenbergs were tried for stealing the atomic bomb and giving it to Russia" (p. 10). This was "the greatest theft in history...The secret of the atom bomb had been stolen" (p. 23). Greenglass's sketches contained "the real secret of the implosion bomb" (p. 95). The technical testimony established "that Greenglass not only had access to the bomb's secret, but that he had sufficient understanding to translate it into sketches" (p. 100). The AEC "had permitted the revelation of how the bomb was created and its secret... The great secret was peddled across the globe" (p. 104). All of this is presented as fact.

This account is most remarkable. The Rosenbergs were not tried for stealing the atomic bomb. In fact, the issue had only to do with the Nagasaki bomb; the "secret" of the Hiroshima bomb never entered into the discussion. There was no credible scientific testimony that Greenglass's sketches contained any "real secrets." Rather, at the time, competent scientists questioned the value of his sketches, and later, when the sketches were finally made available and analyzed, scientific experts concluded that they were almost without value -- except in that they confirmed that the Nagasaki bomb employed somehow the device of implosion -- and that Greenglass had no knowledge or understanding that could have enabled him to give the "secret" to Russia. One of the technical witnesses, Derry, was described by specialists as also lacking the requisite knowledge. The other, Koski, testified only in the most general and ambiguous way. Furthermore, the Russians at that time had available the reports of Klaus Fuchs, a serious scientist who had specialized in the implosion problem. I will not review the record here (cf. Schneir and Schneir, op. cit., for

documentary evidence). There is, to my knowledge, no debate about this specific matter among qualified scientists. It is astonishing that Nizer simply presents these inflammatory statements, with no consideration of the actual facts that were avaialble at the time, and that were later amply extended by expert testimony.

Curiously, Nizer does refer to Harold Urey's objections to the trial, but only on points of law and political wisdom, not on the technical issues on which, as just noted, Nizer takes a stand in opposition to general scientific opinion. Yet this outstanding scientist had written to President Eisenhower that Greenglass was "wholly incapable of transmitting the physics, chemistry, and mathematics of the atomic bomb to anyone" (Schneir and Schneir, p. 257). Nizer does refer to the argument "in ensuing years that Greenglass delivered no secrets" (p. 104), but he misrepresents the argument. It was not simply that "Russia and other countries had known of the atomic formula long before," but more significantly, that Greenglass's sketches had little value and that he was incompetent to transmit technical information. Nizer notes that the defense never challenged the scientific testimony offered by the prosecution, observing that they were handicapped by the reluctance of experts to testify for the Rosenbergs (p. 129), but nowhere does he report the skepticism expressed by serious scientists (Urey, Morrison, etc.), though all of this was well-known at the time that Nizer wrote, and indeed, long before. Again, this reporting technique reveals the fundamental lack of seriousness of the work, and suggests propagandistic intent.

The same considerations apply to his account of the protest movement that developed. Describing the international protest, Nizer writes:

> "The International Communist Party perceived the value of the protest. As if on command, Rosenberg committees appeared in London, Paris,..." (p. 470).

This style of slander by insinuation seriously misrepresents the nature of the international protest. Its character is much more accurately represented in a lengthy letter by the distinguished scientist Jacques Monod to the Bulletin of the Atomic Scientists (October 1953), presented in part in Schneir and Schneir, op. cit., pp. 256f. Among other things, Monod reports Urey's remarks on the insignificance of the technical information transmitted. Without pursuing the matter, the example demonstrates, once again, Nizer's bias and failure to comprehend, or at least to report, significant relevant facts.

The same disparagement of the dissenting opinion is revealed when he discusses protests in the National Guardian in 1951: "Just as the Russians had invented everything first, including baseball, it [sic] also knew all along how to build atomic weapons, but humanistic considerations had deterred it from doing so," (pp. 466-7). I have not checked the original. Conceivably, the paper made these claims. But if so, Nizer has not given the evidence to justify his interpretations of the content of the protest. I doubt that he can, but even if it were possible, this style of reporting

reveals only the bias of the observer.

I do not want to suggest that the book is totally without value. There are some comments on the legal strategy of the contestants, on alleged errors in cross-examination, and the like, which may have some value or interest. But to return to the central point, it is impossible to consider the book as a work of history. Rather, it is at best a badly flawed historical novel, and at worst, a work of propaganda, often in quite questionable taste. Had I been asked by the publisher to comment on the advisability of publishing such a book, I am sure that I would have responded negatively, on grounds of the sort outlined here.

I have not discussed the literary value of the work, such as it may be. I take it that this is irrelevant to the issue.

Sincerely yours,

Noam Chomsky

NC: fak

County of Middlesex
Commonwealth of Massachusetts

Personally appeared and sworn to before me this 4th day of March, 1975.

Notary Public
(My commission expires
June 14, 1979)

EXHIBIT 9
[Attached to foregoing Affidavit of Marshall Perlin]

STATE OF OREGON)
COUNTY OF LINCOLN) ss.:

WILLIAM A. WILLIAMS, being duly sworn, deposes and says:

I am a professional historian formally educated at Kemper Military School (A.A.), the United States Naval Academy (B.S.), the University of Leeds, England, and the University of Wisconsin (M.A. and PhD.). I have been teaching and writing history since 1950 at the following colleges and universities: Washington and Jefferson College, Bard College, Ohio State University, the University of Oregon, the University of Wisconsin, and Oregon State University. I have trained more than 50 MAs in history, and more than 30 PhDs in history. All the PhDs have published articles in professional journals, and most of them have published at least one book. I have published more than 100 articles, and 9 books: all based on extensive and continuing research in the manuscript records of the United States Government (the National Archives), and more than 125 collections of private manuscripts (such as the Papers of Woodrow Wilson, William E. Borah, etc.).

My professional appraisal of The Implosion Conspiracy (Fawcett, 1973) is as follows:

I. By his own account, Nizer prepared the book as part of his contract with Otto Preminger "to write a motion picture script of the Rosenberg spy trial" (pp. 9-10). As published, the bulk of the book is a highly charged dramatization of the trial of Ethel and Julius Rosenberg, followed by a much shorter, though equally emotionalized, summary of the denouement. The volume unquestionably provides Preminger with the basis for making an histronic motion picture.

II. Nizer has not written, however, an exhaustive and scholarly historical study of the subject. There is no inherent and irresolvable conflict or contradiction between those two purposes: i.e., to write a scholarly historical study than can provide the foundation for an excellent motion picture. Indeed, the best motion pictures about historical events are firmly based on such

professional studies. The point here is that Nizer has not written and published such a work. That conclusion is based on the following points.

A. Sources. Despite his expansive assertions about exhaustive research (pp. 11-12), the external and internal evidence provided by the Nizer book reveals a limited scope of secondary as well as primary sources.

Indeed, beyond the trial record and court opinions, the book offers evidence of only two potentially primary sources. One is an interview with Gloria Agrin, an associate of Emanuel Block; but she never met the Rosenbergs, and hence does not qualify as a primary source. The other is Rabbi Koslowe, the prison chaplin; but, in the absence of direct testimony to the contrary, he must be presumed to have honored his confidential relationship with the Rosenbergs. Hence he does not qualify as a primary source.

My professional judgment is that Nizer relied primarily upon four secondary sources: The Judgment of Ethel and Julius Rosenberg, by Wexley; The Betrayers, by Root; The Rosenberg Story, by Gardner; and a novel, The Book of Daniel, by Doctorow. The inherently grave limitations of such research are further compounded in Nizer's case, moreover, because Root relies extensively on Wexley and Gardner. As for the Doctorow book, it is clearly an imaginative work of fiction without any grounding in extensive research in primary source material.

In so far as sources are concerned, therefore, the Nizer book is not exhaustive, scholarly history.

B. The historian's commitment to explore in depth alternate explanations for any event or relationship that is not satisfactorily explained by the apparent cause. The Rosenberg trial provides classic examples of such instances: places, for example, where the entire case presented by the prosecution hangs on highly debatable facts, relationships, and motives. Nizer offers no substantial evidence, external or internal, that he explored

alternate reconstructions on a sustained basis. Thus the Nizer book is in essence not a history, but rather one trial lawyer's account of the trial.

C. Methodology.

1. The use by historians of the disciplines of psychology and psychiatry is at best--meaning when they are professionally trained in those areas--an extremely delicate, sophisticated, and problematical venture into analysis and interpretation. Nizer asserts his claim to use such tools on the basis of his work as a trial lawyer. But, by his words (p. 11), he considers that "A trial is a war...."; and that is the antithesis of how a professional historian views the reconstruction and analysis of history. Nizer is not qualified as a psycho-historian, and his use of those skills is crude and distorted. Consider but one example (p. 25):

> "Poverty and injustice are the parents of revolutionary idealism." (Italics added.)

The events of the last 20 years, let alone the extensive professional literature on that complicated relationship, make it clear that idealism per se, as well as many other factors, produce revolutionary idealism. But Nizer offers one arbitrary explanation.

2. For that matter, Nizer's analysis of the Rosenbergs bears a striking similarity to the one offered by Doctorow in his novel.

III. For these reasons, therefore, the Nizer book does not contain valuable source material about the Rosenbergs for other scholars. It is possible, of course, for an historian to write such a book. To qualify, however, the book must:

1. display evidence, direct and indirect, of exhaustive research in the primary sources (the records left by the protagonists);

2. deal directly and convincingly, on the basis of such primary research, with alternate reconstructions and analyses of the subject. (Nizer, for example, does not even mention a major

study of the Rosenberg Case, nor speak to the issues raised by that work.) And;

3. on that foundation, offer a reconstruction and analysis that transcends previous studies of the subject.

Nizer has not satisfied those criteria. The value of Nizer's book does not lie in its use for other scholars as a scholarly history of the Rosenberg Case, but rather as primary source material for a scholar undertaking a biographical study of the author.

III. The professional historian is trained, and in turn trains his students, to honor without equivocation the spirit as well as the letter of the copyright laws, and the even more basic rights of those who own manuscript materials. If that elementary respect by the historian for his subject is ever seriously weakened by stretching the copyright laws, then the public will inevitably be the loser. For any such abuse of the rights of the owners of primary sources will lead to restrictions that will subvert the first principle of scholarly research--access to primary materials.

William A. Williams

William A. Williams

Sworn to before me this
[illegible] day of [illegible], 1975.

[illegible]

Notary Public

EXHIBIT 10
[Attached to foregoing Affidavit of Marshall Perlin]

Affidavit of Lloyd C. Gardner

" STATE OF NEW JERSEY)
)
COUNTY OF MIDDLESEX) ss.:

I, Lloyd C. Gardner, am a Professor of history at Rutgers College in Rutgers University. My speciality is the New Deal and the Cold War, having published the following in this area, Economic Aspects of New Deal Diplomacy(1964), Architects of Illusion: Men and Ideas in American Foreign Policy 1941-1949 (1970), The Origins of the Cold War [co-authored with Arthur M. Schlesinger, Jr., and Hans Morgenthau] (1970), and American Foreign Policy Present to Past, A Narrative with Documents and Readings (1974). I have also co-authored basic textbooks in diplomatic and U. S. history. From 1970-1973 I was chairman of the history department of Rutgers College.

2. Mr Nizer's basic approach to the Rosenbergs and the case is that used by the psycho-historian, but his qualifications in that area are neither given nor demonstrated in this book. Much of what he says about the Rosenbergs appears to have been drawn from a novel by E. L. Doctorow. If there is a solid research base in primary sources to his discussion of the Rosenbergs' personalities before, during, and after the trial, it certainly is not revealed by anything the author has written. This would seem to be a crucial area in judging the book since Mr. Nizer asserts that in the Rosenberg case it is important to "comprehend the concept of a psychological as well as scientific implosion." This psychological implosion, the reader is advised, resulted from the "mysterious implosive force of idealistic revolutionary doctrine, which the jury found [sic] had propelled two decent, loving people, into desperate espionage activity, without any material reward." How does Mr. Nizer know what the jury thought about the Rosenbergs and some mysterious force? By his own account they were interested only in evidence, and the way it was presented. Such a conclusion, by either the author or the jury, would depend upon establishing a historical chain of evidence between psychological

and political behavior and goes beyond the trail into areas of inquiry where the trained psycho-historian would proceed with extreme caution and self-disciplined research. Mr. Nizer's efforts evidence little concern with either. In short, he is not a professional, and this book is not psycho-history as scholars and experts would understand the term.

3. Nowhere does the author confront, except in the most general and cursory terms, critiques of the trial itself. There is no discussion of the political trial in history as a phenomenon (with its own peculiar set of problems for the scholar), no discussion of other American political trials in the Cold War, no review of the literature on ex-Communist witnesses (certainly essential in any psycho-historian's account of such a case, as, for example, Meyer A. Zelig's Friendship and Fratricide: An Analysis of Whittaker Chambers and Alger Hiss). Most amazing of all, the most serious critical discussion of the Rosenberg trial, Invitation to an Inquest, by Walter and Miriam Schneir is not mentioned -- not even in the short list of works consulted by the author, which included a novel! If the book does not qualify as psycho-history, neither does it qualify as political history.

4. The author's simplification of complicated political problems in history, such as the origins of the Cold War, the McCarthy era, Communism and espionage, reduces the author's perspective on trial testimony. Greenglass's later performances before Senate and House Committees, the strange dream-like behavior of Harry Gold, the witch-hunt atmosphere of the early 1950's, the Truman Administration's record on civil liberties, J. Edgar Hoover's almost imperial reign at the FBI, the fight in Congress over the control of atomic energy, the pressures of partisan politics. None of these are analyzed in the book, which fails as Cold War history as well.

5. What is it then? Mr. Nizer's claim that the only question to be asked about the trial is whether there was sufficient evidence for a jury to believe the Rosenbergs guilty comes as an odd statement since

since the author ranges so far afield in a dramatic effort to vindicate that judgment by reference to pre and post trial events. He is not content to leave the question to a determination of "What the Jury Saw and Heard," but leads the reader on a grand tour to matters clearly beyond the jury's knowledge to find additional evidence that the verdict, if not the sentence, was proper. He cannot have it both ways: he cannot tell the reader that the question of the Rosenbergs actual guilt is the wrong question, an then seek to prove that guilt to justify the verdict by drawing on matters not presented in evidence at the trial. Mr. Nizer's book adds nothing to the historical literature on the Rosenberg case, except speculation on how juries react to testimony. It is not original scholarship in the sense that historians use that phrase, more properly coming under the category of non-fiction novel made famous by Truman Capote's account of a midwestern murder case, In Cold Blood.

6. Assuming that the plaintiffs are correct in their charges that, a) the trial transcript portions of the book, The Implosion Conspiracy, contain several errors, b) the source material for the book is limited to that transcript and information from a few secondary works and contains no other research, c) the reconstructed conversations between the Rosenbergs and their counsel and their children, etc., were fictionalized and false in at least some respects, and d) the letters between Julius and Ethel Rosenberg are mis-dated in some instances and excerpted in a way which distorts their meaning, then serious doubts are raised about the book even on that level.

7. Historians in researching any problem and especially a controversial historical problem are confronted with both primary and secondary sources and the need to establish from these sources something approximating truth. So far as one can tell Mr. Nizer has employed only the trial transcript as a primary source. He did not interview those people who were involved in the case, or at least he makes no reference to any such interview in the book. He has not made an effort to search out the documents from government agencies, nor has he dealt with the political memoirs of elected officials in dealing with the case. In short, he has failed the simplest test of scholarship

that of verification by seeking all alternative sources of information by independent research and thought. Moreover he has compounded this error by fictionalizing even those primary sources that he has used and not identifying fictionalization as such when it occurs in his account. One must conclude, that this book as written, cannot serve as any serious source for information or material of fact for future historians, biographers, or social scientists.

LLOYD C. GARDNER

Sworn to before me this
20th day of March, 1975

Notary Public

THEODORE H. KOLLAR
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires June 19, 1977

EXHIBIT 11
[Attached to foregoing Affidavit of Marshall Perlin]

Letter from Eugene D. Genovese to Mr. Mike Meeropol

THE UNIVERSITY OF ROCHESTER
COLLEGE OF ARTS AND SCIENCE
RIVER CAMPUS STATION
ROCHESTER, NEW YORK 14627

DEPARTMENT OF HISTORY

February 17, 1975

Mr. Mike Meeropol
Western New England College
1215 Wilbraham Road
Springfield, Massachusetts 01119

Dear Mr. Meeropol:

In response to your request for my opinion on the controversy surrounding Louis Nizer's Implosion Conspiracy, please permit me the liberty of several observations. I am, of course, not a lawyer and can only express my judgment as a professional historian. But I do have a particular interest in the issues since I am a member of the Executive Council of the American Historical Association and of the AHA's Committee on the Profession. Consequently, I have a particular responsibility to concern myself with matters affecting the availability of historical materials to scholars.

First, I understand that there is some question about the Implosion Conspiracy as a work of scholarly merit. It is always possible that some of my professional colleagues would sustain its claims on that level; I can only give you my personal opinion that it is an entertaining commercial venture. I may, like many other professional historians, be taking a snobbish attitude here. It may be that works of this sort have greater historical validity than we normally like to think. But I must say in all frankness that I cannot imagine this books' being of value on any other level than as a document in itself. That is, I believe that historians in the future will read the book as an indication of how certain segments of public opinion were viewing the Rosenberg case at a particular time. In that sense, however, virtually every book written, even Little Orphan Annie, may be said to be of interest to the world of scholarship. I should think, however, that this is a very different sense than that being claimed by the author.

Second, and more to the point, I am deeply concerned about the implications of the "fair use" doctrine. As a professional historian and indeed as an active member of the Professional Committee of the AHA, I am genuinely committed to making important historical documents available and in reducing the kinds of restrictions that might be imposed. At the same time, those of us who have been working to broaden the base of document availability have a particular responsibility to protect individuals against abuse. And this would seem to me to be the question here.

I should think that there are two issues concerning the use of family letters. If those letters have already been published and have been copyrighted, then I think it utterly absurd to suggest that another author has the right to use them without the permission of the holder of the copyright. There is absolutely no question here of scholarly availability. Indeed, this question arises often. That is, a serious historian, in countradistinction to a commercial opportunist, would first try to get permission to reprint certain letters or other copyrighted material. If he failed, he would have the option of summarizing that material and then directing his reader to the original place of publication for the complete text. This is normal and proper procedure; it protects the copyright and it in no way infringes upon the public's right to know. Now, if the material in question has not been published, the problem becomes stickier. However, if we are talking about papers in private possession, then it would be a professional disaster to permit authors to use those papers without permission. The point here ought to be obvious even to a layman. Unless the family in question can be sure that its restrictions on use are respected, it will do everything in its power to suppress or even destroy the material.

Let me take a case from my own work. I have read many plantation manuscripts and letters of slaveholding families. These documents may be found in libraries all over the country, particularly in the South, and normally are available for quotation. However, there are certain family records that are restricted by the doner. In these cases, scholars are allowed to read the material and to present a fair summary of it; they are forbidden to quote from the material without permission. Were I or anyother reputable historian to violate the restriction, it would be a serious blow to the future of our work. For in such a case, we would be putting sensitive families on notice that they could not protect their rights and we would be, in effect, encouraging them to withdraw the records altogether or to refuse to donate them in the first place. Consequently, in all such cases, respectable historians, regardless of their political, ideological, or social viewpoint, are bound to respect the wishes of the family in question.

Consequently, speaking as a historian unacquainted with the niceties of the law, I must say that I find the arguments advanced by Mr. Nizer, so far as I can understand them, to be without moral foundation and indeed propose a serious threat to the integrity of my profession.

Yours sincerely,

Eugene D. Genovese

EDG:lm

Eugene D. Genovese
Chairman
Department of History

THE UNIVERSITY OF ROCHESTER
COLLEGE OF ARTS AND SCIENCE
RIVER CAMPUS STATION
ROCHESTER, NEW YORK 14627

DEPARTMENT OF HISTORY

March 12, 1975

Mr. Marshall Perlin
36 West 44th Street
New York, New York 10036

Dear Mr. Perlin:

As a followup to my previous letter, may I make some observations on the nature of scholarly writing in history, as it may bear on this case?

As I indicated, I personally would not rate Mr. Nizer's book as a serious contribution to scholarship. However, even if it were so rated, the question of its use of materials would remain. The very first thing that we teach our new graduate students is that the very best of historical studies is an interpretation of data and must not be confused with the data themselves. That is, any future historian who is interested in the Rosenberg case would be required, as a simple matter of professional standards, to review the source materials on which the existing literature has been based. The only sense in which Mr. Nizer's book would qualify as a source for a historian would be as a source for the mind of the author perhaps in relation to the mind of other intellectuals who are writing on controversial subjects in time and place. I respectfully submit that no historian worth his salt would rely on such a secondary work without first reviewing the materials himself.

Let me point out that each author selects from his source material unless of course he is merely editing a documentary history. Consequently, what distinguishes one historian from another, apart from professional talent, is the point of view that he brings to his sources. Therefore, a judgment on the work in question must turn on the skill with which the particular historian has selected his documents and represented them accurately.

I think it ought to be clear that no historian ought to claim the right to use copyrighted or private materials with the excuse that he himself is providing an historical document. Indeed, as a historian, I must tell you that I regard such a claim as frivolous and highly unprofessional.

Yours sincerely,

Eugene D. Genovese

EDG:lm

Eugene D. Genovese
Chairman of History Department

EXHIBIT 12
[Attached to foregoing Affidavit of Marshall Perlin]

Affidavit of H. H. Wilson

County of Bucks
State of Pennsylvania

H. H. Wilson being duly sworn deposes and says:

I am a Professor in the Department of Politics, Princeton University, Princeton, N. J., where I have taught for twenty-seven years. During this time I have taught a course in "The Politics of Civil Liberties." As part of this course I have students study in considerable detail such controversial trials as Sacco-Vanzetti, the Dreyfus affair, Tom Mooney, and the trial of Julius and Ethel Rosenberg.

Since 1953 a considerable number of studies have been published which raise serious questions about the prosecution of Julius and Ethel Rosenberg. Distinguished scientists, talented attorneys, and serious social scientists have examined the case in great detail. All have raised questions that disturb teachers and students concerned with the impartiality of American justice.

Therefore, when it was announced in February 1972, that the distinguished and successful trial lawyer, Mr. Louis Nizer was writing a book to finally dispose of doubts about the Rosenberg case, I was genuinely excited by the prospect that finally questions, disturbing questions, would be resolved.

Unfortunately this has not resulted. As one analyzes the Nizer compilation, THE IMPLOSION CONSPIRACY, doubts about its scholarly quality and objectivity multiply. It fails to take into account any of the new evidence which

has been presented since the execution of the Rosenbergs on 19 June 1953, and there is no new or original information.

The book fails to meet the standard requirements for scholarly presentation. One expects to find in serious social science research footnotes documenting sources and a bibliography indicating at least the most relevant books and documents. This is, of course, so that other students may evaluate the basis for the analysis and conclusions. Mr. Nizer provides no footnotes, no index, and a most limited bibliography. He ignores and apparently did not read one of the most detailed and respected analyses of the case, INVITATION TO AN INQUEST, by Walter and Miriam Schneir. He does, however, acknowledge reliance on a novel: E. L. Doctorow's THE BOOK OF DANIEL.

Certainly accuracy in the presentation of material is expected of any scholarly work. THE IMPLOSION CONSPIRACY contains many errors. For example, on page 80 Mr. Nizer has Julius Rosenberg telling Ruth Greenglass to take her "child" to Albuquerque, but on page 122 the same event is told with reference to her "children." At that time the Greenglasses had no children. Again, on page 149 Mr. Nizer reports that Harry Gold came to the United States at the age of 14. In fact Gold was 3 years old. One is also informed that "the FBI swooped down on him at the Philadelphia hospital," but on page 161 we are informed that "Gold was arrested by the FBI while he was in his office at Brothman Associates" and that "Brothman was later convicted for espion-

age." This is dramatic but not factual. Brothman was never indicted nor arrested for espionage, and Gold was not arrested in New York or at the Philadelphia Heart Hospital. Rather he was voluntarily questioned for about a week in Philadelphia, without being represented by a lawyer - a fact Mr. Nizer fails to mention.

On page 150 readers are informed that "Gold dealt directly with Anatoli Yakolev, the chief of the spy network" who "was sheltered by an official position with the Russian delegation to the United Nations." Unfortunately for Mr. Nizer's scholarly pretensions this is wrong. We are also told, on page 150, that "when the spy ring was cracked (1950) Yakolev was indicted . . . but the Russian Embassy had no difficulty in speeding him out of the country." Actually Yakolev left the United States in 1946 under circumstances that hardly suggest frantic hurry.

Of more concern in what is presented as a scholarly objective analysis, Mr. Nizer edits and condenses trial testimony without indicating deletions. In addition, he makes the assertion that "no criminal trial in American history enjoyed so many applications to the courts, twenty-three; was reviewed by so many judges . . . ." This again apparently does not accord with the facts. The Caryl Chessman case was actually in the courts for a longer period and was subject to at least twice as many appeals. It is impressive for a layman to be told that 112 judges reviewed the case until one discovers that 87 are the same Supreme Court

judges, plus reading Justice Black's statement that "It is not amiss to point out that this court has never reviewed this record and has never affirmed the fairness of the trial below."

The unauthorized use of the Rosenberg's letters certainly raises a question of scholarly ethics, but in any case the use doesn't contribute any significant scholarly merit, but perhaps was intended to add "color" and emotional impact.

One is also disturbed by Mr. Mizer's failure to deal with the doubts expressed by distinguished scientists - Harold Urey, Albert Einstein, Philip Morrison, Henry Linschitz - who expressed disbelief in the alleged testimony provided by David Greenglass.

Careful research has strongly suggested that the hotel registration card, supposedly documenting Harry Gold's presence in Albuquerque, was a forgery. Yet Mr. Mizer fails to consider this charge, or another contention that Gold could not have taken a train from Albuquerque to New York in time to keep an appointment with Yakolev in Long Island. There is no consideration by Mr. Mizer of the likelihood that Gold was a pathological liar, a possibility Gold himself suggested in an earlier trial when he said he lied so much "it is a wonder that steam didn't come out of my ears at times." In the Rosenberg's trial only two people knew of Gold's talent: the chief prosecutor Saypol and Judge Kaufman. Mr. Mizer neglects to deal with this problem.

There is also no indication that Mr. Mizer made use of the pre-trial conversations between Harry Gold and his lawyer, in which Gold fails to mention "Julius," a Jello box top, or a stay at the Albuquerque Hilton Hotel.

Finally, one would expect a serious scholar dealing with a controversial subject, and especially one who proclaims - "I had no difficulty being objective. I had nothing to overcome" - and asserts his determination to interview "every person I could find who touched their lives or deaths, as if I were a reporter on a Pulitzer Prize mission" - to talk with survivors Morton Sobell, Max Elitcher, David and Ruth Greenglass. There is no indication that the determined Mr. Mizer did so, although the producer of the television documentary, "The Unquiet Death of Julius and Ethel Rosenberg" interviewed at least seventy persons.

At least one comes away from reading THE IMPLOSION CONSPIRACY with an understanding of Mr. Mizer's distaste for what he describes as "the analytical syndrome approach."

One is forced to conclude that the claims for this book are unsubstantiated. It fails to meet minimal standards for serious social science research.

H. H. Wilson

Sworn to and subscribed
before me this 22nd day of
March 1975

Notary Public, Doylestown, Bucks Co.
My Commission Expires Feb. 26, 1978

EXHIBIT 13
[Attached to foregoing Affidavit of Marshall Perlin]

Affidavit of Greg F. Herken

[Letterhead of University of California, Santa Cruz]

20 March 1975

Gregg F. Herken being duly sworn deposes and says:

I am a historian specializing in the period of American history after the second World War. I received my doctorate from Princeton University in the field of American diplomatic history in 1973, having written my dissertation on "American Diplomacy and the Atomic Bomb, 1945-1947." I am currently an instructor and a resident preceptor in Merrill College at the University of California, Santa Cruz. A paper by me on the subject of "atomic diplomacy" was read at the recent convention of the American Historical Association in Chicago, and my article, "Atomic Diplomacy Reversed and Revised," will appear in an anthology to be published by Little, Brown this November. I have also just completed an article for possible publication by Bucknell University Press, entitled "Under 'A Most Deadly Illusion': Politics and Diplomacy of US Atomic-Energy Policy, 1942-1949," and have begun work on a book that deals with this subject. I have read Louis Nizer's The Implosion Conspiracy and am prepared to discuss its scholarly merits.

There are, as the plaintiffs have probably already noted, signficant factual errors in the Nizer book. To give but one example of particular interest to this writer, Mr. Nizer's assertion (on page 104 of the Fawcett paperback edition)--"It has been argued in ensuing years that Greenglass delivered no secrets, because Russia and other countries had known of the atomic formula long before. Professor Koski's testimony contradicted this. The defense never offered testimony to the contrary."--is an error of fact, as well as of interpretation.

More importantly, Mr. Nizer's book neither breaks new ground in the discussion of the Rosenberg case, nor does it even attempt to deal with the substantial secondary material written on the trial itself and on the general subject of postwar America. The Implosion Conspiracy is, indeed, premised on the assumption of the Rosenbergs' guilt for the supposed theft of the "atomic secret"--an assumption that is not, however, stated

State of California, County of Santa Cruz
The undersigned swears that the above statement is true and correct.

Adele M. Wood
notary

Greg F. Herken
signed

OFFICIAL SEAL
ADELE M. WOOD
NOTARY PUBLIC - CALIFORNIA
SANTA CRUZ County
My Commission Expires June 7 1977

by the author anywhere in his work. Yet the fact that the evidence for this assumption is inconclusive at least (as documented, for example, in the 1965 book by Walter and Miriam Schneir, Invitation to an Inquest), requires that the serious historian of the case both explain and justify the assumptions that underlie his arguments and conclusion. Mr Nizer not only fails to do so, but admits in his Introduction to the book (page 10) that it was not his intention to do so. Thus, he states, his writing aimed at "'abreaction,' the re-creation of the contemporary emotions of that day, not the coolness with which events can be viewed in retrospect." Here the author has defined the category of historian and purposefully excluded himself from it. The book that follows is, as the author has forewarned, more in the nature of a brief for the prosecution than a dispassionate consideration of the evidence for both sides, the temper of the times, and, finally, the historical implications of the Rosenberg case.

Thus, neither by form (his lack of attributing footnotes would get Mr. Nizer thrown out of the AHA); nor by substance (the book not only fails to deal with new evidence but ignores the evidence of well-known, previous works on the subject); nor even by the author's stated intention can The Implosion Conspiracy be considered a work of serious historical merit, justifying the "fair use" doctrine of current copyright law.

signed,

Gregg F. Herken
Preceptor
Merrill College
University of California,
Santa Cruz 95064
(408) 423-3946

Stae of California, County of Santa Cruz
The abovesigned swears that the above statements are true and correct

Notary

signed

OFFICIAL SEAL
ADELE M. WOOD
NOTARY PUBLIC - CALIFORNIA
Principal Office in SANTA CRUZ County
My Commission Expires June 7, 1977

EXHIBIT 14
[Attached to foregoing Affidavit of Marshall Perlin]

Affidavit of David M. Oshinsky

STATE OF ~~NEW JERSEY~~ Florida
(COUNTY OF ~~MIDDLESEX~~ Palm Beach) SS.:

I, David M. Oshinsky, am a Modern American Historian specializing in the Cold War era. My publications include, Senator Joseph McCarthy and the Cold War, (Free Press, Macmillan forthcoming, June, 1976) and Senator Joseph McCarthy and the American Labor Movement (University of Missouri Press, forthcoming, Jan., 1976.) It is my firm belief that Louis Nizer's The Implosion Conspiracy is a superficial and historically inaccurate account of the Rosenberg case which offers no new factual information. My reasons are as follows.

Despite Mr. Nizer's assertion that "I was going to know as much about the Rosenbergs and the trial as was humanly possible to know..." his research is entirely inadequate. He has simply gone over the trial record, held three interviews (according to his own limited bibliography), and used a few well-known secondary sources. Surprisingly, he has completely ignored Walter and Miriam Schneir's Invitation to an Inquest, a massively researched volume which has raised many new and disturbing questions about the case. As a consequence, Nizer is often forced to make sweeping generalizations on the slimmest of evidence. For example, when discussing the early lives of the Rosenbergs, Nizer gives the reader an incredibly thin psychohistorical account drawn almost entirely from Jonathan Root's

The Betrayers. (Compare Root's description of a strike in which young Ethel Greenglass Rosenberg participated with Nizer's. Root: "Ethel and her sister strikers, all wearing raincosts despite the heat..., linked themselves together arm-in-arm and swept up and down the sidewalk of 36th Street, frightening off fully half of the scab force as it reached the plant. When the first delivery trucks of the day appeared, a platoon of girls descended on the lead truck, yanking the driver from the cab. They tore off all his clothes and held him face down on the pavement while one girl took her lipstick and wrote I AM A SCAB across his back." Nizer: "Though it was hot, Ethel and her army donned raincoats and, linked arm-in-arm, paraded up and down 36th Street barring and frightening away most of the substitute workers. When a delivery truck arrived, the driver was dragged from his perch by the girls, who acted like a swarm of bees overcoming a bull. They tore his clothes off and holding him face downward wrote "I am a scab" on his back with lipstick.")

As historians have long noted, any attempt at psychohistory requires a mass of evidence about the subjects under consideration and a full understanding of sociological, psychological, and psychiatric techniques. Entire books have been devoted to understanding the thought processes of a Woodrow Wilson or a Martin Luther; and still the authors can only speculate as to the motivations of their subjects. Nizer, on the other hand, has no qualms about stating in a single sentence that Julius Rosenberg turned to Communism because of a

pamphlet he read about the case of labor radical Tom Mooney, or that the Rosenberg children were "neurotic" because "it didn't occur to them (the Rosenbergs) that their political fanaticism had deprived their children of the warmth and intimacy which they insisted would come to the world if their theories prevailed." Is Nizer claiming that Communists have more neurotic children than non-Communists or anti-Communists? He certainly cites no evidence. Is he familiar with the fact that studies by Kenneth Kenniston of Yale and S. M. Lipset of Harvard demonstrate that children from politically radical home are more goal oriented and more respectful of their parents than children from apolitical, materialistic homes? Unsubstantiated statements like these pervade the book and greatly weaken any claim to historical accuracy or objectivity.

Nizer has ignored factual material that seems to conflict with his interpretation of the case. Nowhere does he mention that many prominent American scientists stated in 1945 that Russia was only a few years away from developing the Atomic Bomb, or that during the trial and appeal period itself knowledgeable publications like Scientific American believed Greenglass' sketches and diagrams to be "relatively unimportant." (Nizer often justifies this type of omission by noting that the Rosenberg defense never brought it up at the trial. Therefore, he concludes, it does not fit into his tight framework of whether the jury had sufficient evidence to find the defendants guilty. But throughout the book, Nizer uses much information the jury never saw or heard to justify the guilty verdict.

Furthermore, since he is allegedly attempting to enlighten the reader, there is no good reason to keep this information from him.) Nizer also omits post-trial disclosures bearing adversely upon the validity of prosecution testimony by Harry Gold and David Greenglass. In 1956, for example, Greenglass provided "information" to an Internal Security subcommittee which directly contradicted much of his earlier testimony at the Rosenberg trial. And researchers have recently disclosed that Harry Gold, at the time of his arrest, could not even remember meeting Greenglass five years before in Albuquerque, and had originally claimed the technical data Greenglass allegedly passed him was of "no value" to the Russians.

There are many other disturbing parts of the book. First, it is written in a historical vacuum. The emotional climate surrounding the trial is hardly mentioned. There is almost no analysis of McCarthyism, the Korean War, the recent fall of China, or the Hiss Case. Second, Nizer's own bias against Communism and Communists is overwhelming. Communism is constantly referred to as a "fanatical movement," and the Rosenbergs as "fanatical idealists." On the other hand, Prosecutor Irving Saypol was "effective because of an inner conviction that he was fighting a wicked enemy. It armed him with security. There is no more effective weapon to pierce a juror's doubts. Also it made him determined to convict, thus offsetting fanatical Communist convictions." Verbiage like this hardly meets Nizer's claim that "I had no difficulty being objective. I had nothing to overcome. I started with a clean slate."

Finally, the book is filled with factual errors. For example, some of the Death House letters are mis-dated; an erroneous claim is made that the jury was sequestered; Nizer misinterprets a statement by Jonathan Root in a dramatic attempt to show that "Save the Rosenberg Week" in England overshadowed preparations for the Queen's coronation when, in fact, the coronation had taken place two weeks before the execution. If Nizer had bothered to do some primary research he would not have run into these problems.

In closing I must express keen disappointment that a man of Nizer's intelligence and ability should produce such a shallow and inaccurate piece of work. It does credit neither to himself nor to the cause of history.

David M. Oshinsky

Sworn to before me this
21 of March, 1975

Notary Public, State of Florida at Large
My Commission Expires [illegible] 26, 1975

Notary Public

EXHIBIT 15
[Attached to foregoing Affidavit of Marshall Perlin]

Affidavit of Athan Theoharis

"STATE OF WISCONSIN)
COUNTY OF MILWAUKEE) ss.:

ATHAN THEOHARIS, being duly sworn, deposes and says:

I am an Associate Professor of American History at Marquette University. My principal area of interest and research is 20th Century U.S., and more particularly the years after 1945. I received the PhD in history from the University of Chicago in 1965 and have taught at the following institutions: Instructor, Texas A & M University (1962-1964), Assistant Professor, Wayne State University (1964-1968), Visiting Assistant Professor, The University of Iowa (summer 1968), Associate Professor, CUNY-Staten Island (1968-1969), Associate Professor, Marquette University (1969 to the present). I am the author of Seeds of Repression: Harry S. Truman and the Origins of McCarthyism and The Yalta Myths: An Issue in U.S. Politics, 1945-1955, co-author of Anatomy of Anti-Communism, co-editor and contributor to The Specter: Original Essays on the Cold War and the Origins of McCarthyism, contributor to Politics and Policies of the Truman Administration, Cold War Critics, and Public Opinion and Historians, and have had articles published in seven different journals and reviews published in twelve different journals. I am recognized as an authority on McCarthyism, federal wiretapping policy, and postwar internal security policies and court cases. As evidence of this, one of my articles received a "Certificate of Merit" in the American Bar Association's 1972 Gavel Awards competition, my articles have been reprinted in five different publications, I have been asked to comment or give papers at twelve different professional meetings, I have testified as an expert witness and served as a consultant to congressional committees, and I was appointed Honorary Member of the Mark Twain Society for my book Seeds of Repression (which was also selected one of the best books published in 1971 by Choice, the library journal). These publications do establish my expertise in the area of internal security policy, and my ability as an historian to evaluate the scholarly contribution of Mr. Louis Nizer's book, The Implosion Conspiracy.

The Implosion Conspiracy is not a scholarly work, and it is doubtful that it shall be consulted by historians. Its failings derive from the lack of training of Mr. Nizer as a serious scholar and the type of work he produced. From my own experience researching in archives, and from my training as a graduate student, I have learned to respect the widely accepted standards of operation requiring that the researcher secure permission when quoting extensively from copyrighted material. Since Mr, Nizer is an attorney, I cannot understand why he did not seek permission. His claim that he need not do do because of the "public's right to know" does not stand up upon close examination of this work. For this is not a scholarly work, if that in itself justifies not honoring copyright. What

The Implosion Controversy is is a work of fiction based on an important, and for serious scholars, controversial trial. In telling a dramatic story; Mr. Nizer resorts to a number of literary devices which are nonscholarly, when not dishonest. Let me but list a few examples. He quotes conversations which allegedly took place between Julius Rosenberg and his father during Julius's youth and another conversation which allegedly took place between Ethel Rosenberg and her mother during her youth. This is Timese journalism; there are no records of such conversations. Then, and this is far less excusable, Mr. Nizer puts in quotation form Ruth Greenglass's reconstruction of the conversations which allegedly took place between the Greenglasses and the Rosenbergs in 1944 and 1945. What Nizer is doing is rewriting the court record. To the unsuspecting reader--and particularly the audience for which Mr. Nizer is writing--the effect of this literary device is to create a certain authenticity to the conversation. No serious scholar would resort to such a device; it violates the strict canons we adhere to to respect the authenticity of records--in this case the method of questioning by the prosecution to elicit Mrs. Greenglass's testimony.

In a further sense, there is no reason why Mr. Nizer needed to quote extensively from the prison letters of the Rosenbergs. His book adds nothing new to our knowledge of the case. In a sense, it is only a rehash of the New York Times's coverage of this important trial interspersed with Mr. Nizer's asides when commenting on particular rulings of the presiding judge or tactics and motions of the defense and prosecuting attorneys. Mr. Nizer indeed only quotes from the prison letters to make his story more dramatic, and to represent the Rosenberg case as human drama. What Mr. Nizer does not even attempt is to address the very difficult questions posed by this case, which historians are only beginning to grapple with. It is, on the one hand, significant that Mr. Nizer does not cite and has not consulted the extensive literature discussing the Rosenberg case and postwar internal security politics and court cases. On the other hand, it is futher significant that he did not even attempt to secure access to the FBI investigative reports; an effort which every serious scholar and even the producer of the PBS television program "The Unquiet Death" has attempted.

The Implosion Conspiracy was begun as a television drama. It is no more than that. It is not a work of scholarship. The resort to phony quotes, the failure to research thoroughly and widely, the failure to ask even basic questions about the case and the politics of the post-World War II years makes this a work of fiction, though one which follows closely the court record of the case and does not create events."

Athan Theoharis

Sworn to before me this
[illegible] day of [illegible], 1975

[illegible]
Notary Public

EXHIBIT 16
[Attached to foregoing Affidavit of Marshall Perlin]

Affidavit of Norman T. Markowitz

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

I, NORMAN D. MARKOWITZ, being duly sworn and depose and say:

I am an Assistant Professor of History at LIVINGSTON COLLEGE, RUTGERS UNIVERSITY, specializing in Recent American History. My major works in areas related to this one are Rise and Fall of the People's Century: Henry A. Wallace and American Liberalism 1941-1948 (1973) and "From the Popular Front to Cold War Liberalism", in Griffith and Theoharis, eds., The Specter (1974). I am presently working on a booklength study of Theory and Function of anti-Communism in Recent American history which, among many other things, deals with the mass media treatment of the Hiss and Rosenberg Cases. I have also taught undergraduate seminars on the topic of American anti-Communism at Livingston College over the past three years. The Rosenberg case has always been one of the major topics that I have covered in the seminar.

Assuming that the plaintiffs are correct in their charges that, a) the trial transcript portions of The Implosion Conspiracy contain errors, b) the source material for the book is limited to the trial transcript, appeals up to 1953, and a few secondary sources and contains no other research, c) the reconstructed conversations between the Rosenbergs and their counsel, the Rosenbergs and their children, etc., were fictionalized and false in at least some respects, and d) the letters between Julius and Ethel Rosenberg are mis-dated in some instances and excerpted in a way which distorts their meaning, I would conclude that the Nizer book is devoid of scholarly merit. Indeed, I had also reeched that general conclusion from my reading of the book, given my previous knowledge of the historical context of the 1940's and 1950's.

First of all, the Nizer book is two things -- an undocumented allegedly accurate commentary to selected portions of the trial transcripts and the author's own viewpoints and anecdotes about the inner workings of the

American trial system. The book, I feel, lacks the critical approach and analysis necessary for useful scholarships, i.e., balancing and weighing of the evidence on both sides. Nowhere, for example, in the book are the Rosenbergs' contentions of their innocence carefully examined. Rather, the couple are condemned by the author at every turn, while their private lives are made into the stuff of soap opera. Nizer's comment on Ethel Rosenberg that "her life and death confirmed an extraordinary will -- a will to rise above her environment, a will to become an artist, a will to be a revolutionist and a superhuman will to live against a death current powerful enough to have destroyed two other lives" (p. 30) is typical of the judgment that come before the facts in the work, and that make the author, in my opinion, a protagonist for the prosecution, father than a scholar of the events in question.

As an historian of this period, I am especially troubled at Nizer's failure to look at the historical context in which the trial took place to understand its function as a political trial, or to examine critically

the specific background of the case. Even though there now exists a fairly extensive, scholarly literature on the cold war, the atomic energy question, and the modifications of civil liberties in the post-World War II period, Nizer has no apparent knowledge of that literature. Also, and more seriously, Nizer shows no knowledge of subsequent litigation on the case and the mass of post-1953 evidence which has appeared in many sources, but has been drawn together most effectively in Walter and Miriam Schneir, Invitation to an Inquest. This evidence pertains to the mental health and general reliability of one of the two leading prosecution witnesses against the Rosenbergs, Harry Gold, the legally questionable actions of the FBI in events leading up to the arrest and trial, and the scientific value and significance (as attested to by scientists) of the lens mold sketches and other materials allegedly stolen by David Greenglass. Furthermore, the complete absence of footnotes in the book (a book which records alleged private conversations) makes it impossible for scholars or the public who "want to know" to check Nizer's work

against others in a critical manner. Only if this condition were met could it be contended that the work furthered any serious accumulation of verifiable knowledge on the case.

The Implosion Conspiracy, in my opinion, constitutes commercial exploitation rather than scholarly inquiry of the Rosenberg case. It is without critical spirit and largely ignorant of the critical issues concerning the trial. At no point in the book did I come away with the feeling that Nizer was interested in the truth about the Rosenbergs, as against the uncritical defense of American Judicial procedures and the melodramatic rendition of their life and love that he presents. The book, in my opinion, adds nothing to what is known about the case, and ignores most of what has been turned up in the last twenty years. Its overall effect, in my opinion, is to distort seriously rather than to elucidate the events in question. For these reasons, I consider it useless as scholarly source on the Rosenberg case.

NORMAN D. MARKOWITZ

Sworn to before me this

day of March, 1975.

NOTARY PUBLIC, State of NEW YORK
No. 31-0377700
Qualified in New York County
Commission Expires March 30, 19[illegible]

EXHIBIT 17
[Attached to foregoing Affidavit of Marshall Perlin]

Letter from Alvin H. Goldstein to Mr. Perlin

[Letterhead of N-PACT]

Dear Mr. Perlin:

This letter is in response to your inquiry as to the procedures I followed in the development and research of the film and book "The Unquiet Death of Julius and Ethel Rosenberg".

By virtue of my academic training I generally follow a standard scholarly approach to research irrespective of the subject, in the specific instance of The Rosenberg Case where myth and distortion could color findings, a social scientist must go even further in a rigid system of research so as to make certain he has not allowed his own bias and that of his subjects to affect his findings.

Procedurally one first makes certain he has read all the relevent literature on the subject. In this case that obviously means more than a trial record, it includes approxiamately three score titles, literally thousands of periodical accounts, every one of the two dozen appeals and opinions, journalistic accounts, and selected readings which relate to the enviornment in which the case developed. This incidentally requires reading back into turn of the century material. This process took me and my staff almost six months. Next came the personal interviews which provide the scholar with another informational input that provides more reality and dimesion to the readings. In this case I identified 125 persons who had a direct or peripheral relationship to the case from as many points of view as our research could garner. I or my staff spoke with over a hundred person directly and each was asked a similar list of questions. As you know we located all of the jurors living and even discovered the death of Harry Gold. When one considers the locating of Dr. Fuchs and Anatoli Yakovlov as the most impossible of research problems, which we accomplished, one can get some sense of what scholarly research requires.This stage of our work took three additional months. At this point I was able to literally draw what I call a factogram, that is a chart containing the information which could be supported thru the research. From that emerged the content of the broadcast. Namely what we could say we had learned, which could be factually supported, and which could satisfy our demands upon ourselves for unbiased reporting. The results were contained in the film and book report.

You asked what use I made of one Louis Nizers work on the subject. This book was skillfully written and we treated it as we did so many other popular treatments of the subject. That is with interest particularly inasmuch as Nizer is a close associate of Kaufman and Saypol but with a skepticism reserved for any work which smacks of cronism and does not have a scholarly foundation for its development.

NPACT
NATIONAL
PUBLIC AFFAIRS
CENTER
FOR TELEVISION
955 L'ENFANT PLAZA NORTH, S.W. WASHINGTON, D.C. 20024 (202) 484-1500

The work lacked substantive research such as I have suggested we would require but more importantly was simply one mans point of view based on one mans re-reading of a trial transcript. This is acceptable literary procedure but it is not scholarly research.

Cordially,

Alvin H. Goldstein Phd
Senior Producer

Washington DC
March 9, 1975

Sources of information and persons contacted during the course of research into "The Unquiet Death of Julius and Ethel Rosenberg"

FBI

Clarence M. Kelley
Clyde Tolson
Tom Harrington
Fred Birkby
Leo Frutkin
W .H. Damon
H.L. McConnell
John Harrington
John Lewis
Richard Brennan
Hugh Clegg
Robert Lamphere
Anthony Litrento
William F. Norton
Richard Dennis
Frances Keogh
David Divan

Dept. of Justice

Jonathon Moore
Bob Stevenson
Jim Heiss
John Davitt
Herbert Brownell
William P. Rogers

Robert Dixon
Joseph Shallip
Joseph Tafe
A. Warren Littman
Joseph Vitale
Silvio Mallo
Tom Greitz
Robert Saloschin
Mary Lawson
Savery Gradoville

Prosecutors

Roy Cohn
James Kilsheimer
Myles Lane
Irving Saypol

Jury

Vincent Lebonitte
Charles Duda
Charles Christie
Harold Axley
Howard Becker
James Tessitore
James Gibbons
Mrs. Lisette Dammas
Chauncey Miller

Judges

Judge Irving Kaufman
Justice William O. Douglas
Justice Tom C. Clark

In connection with government's witnesses

David Greenglass
Ruth Greenglass
O. John Rogge
Max Elitcher
Helen Elitcher
Augustus Ballard
Dr. Julius Iosifides
2 nurse friends of Harry Gold
Walter Koski

In connection with the defense

Morton Sobell
Helen Sobell
Michael Meerapol
Robert Meerapol
Ethel Goldberg
Gloria Agrin
Dr. Philip Morrison
Daniel Edleman
Dr. Saul Miller
Bill Wolff
Emily Alman

(continued)

Last Days

Sherman Adams
Gerald Morgan
Bernard Shanley
Bryce Harlow
Oveta Culp Hobby
Ann Whitman
Jim Hagerty
Gabriel Hauge
Malcolm Moos
Emmett John Hughes
Harold Willey
James V. Bennett
Gerry Houlihan
David Eno

Re Klaus Fuchs

Klaus Fuchs
Nephew of Klaus Fuchs
Marshall Perlin
Arthur Kinoy
C.L. Marshall
Jim Cannon
John G. Marshall
Sir Norman Skelhorn
Rear Admiral K. Farnhill

Authors

Walter Schneir
Miriam Schnier
John Wexley
William Reuben
Virginia Gardner
Malcolm Sharp
Bob Donovan

Misc.

Bill Arthur
Russian Embassy
USSR delegation to the UN
Senate Internal Security Committee
Otto Preminger
Stanley Kramer

Libraries

Library of Congress
National Archives
Eisenhower Library
Truman Library
University of Kentucky
Jewish Museum
California Historical Society
Wisconsin Historical Society
Navy Museum

Sherman Grinberg
NBC
News of the World
Hearst-Metrotone News
Time-Life Picture Agency
UPI
INS
Wide World Photos
Daily World
BBC
ORTIF
Viznews
CBC
RAI
CBS
ABC

(continue

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National Guardian
Daily Worker

EXHIBIT 18
[Attached to foregoing Affidavit of Marshall Perlin]

Affidavit of Walter and Miriam Schneir

AFFIDAVIT

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

WALTER SCHNEIR and MIRIAM SCHNEIR, both being duly sworn, depose and say:

We are the authors of the book INVITATION TO AN INQUEST (Doubleday, 1965; W. H. Allen, London, 1966; Delta, 1968; Penguin, 1973).

Herewith is a brief description of the methodology which we employed during the five years that we researched and wrote the book INVITATION TO AN INQUEST:

Our initial efforts were directed towards seeking out and reading everything that had been written about the case previously. To this end, we used Readers' Guide to Periodical Literature and similar guides to identify and obtain articles that had appeared in both popular and scholarly publications, including university quarterlies and law reviews. We also looked through Cumulative Book Index, Book Review Digest, Books in Print and similar indexes to find books that dealt directly with the subject and also books that could provide general background information--such as memoirs of Truman, Eisenhower, Stimson, Forrestal; works on atomic energy; and

studies of the FBI. We made use of the card catalogues of the New York Public Library to discover other books, particularly those published abroad. We went through the relevant collections of various book stores that specialize in rare and out-of-print editions and also followed up any references to books noted in the books that we found and read. We purchased scores of books and made notes and photocopies from others. In this way we felt that, with the exception of foreign language works unknown to us, we probably had seen all books that dealt in any manner with the case. We attempted to learn of any doctoral thesis of the subject and found one dealing with the treatment of the case in four French and Italian newspapers.

For newspaper research, we went through The New York Times Index and studied back issues on microfilm and also utilized the library's newspaper division and read a selection of other big city papers to observe their treatment of the case and to study any special features and investigative reports. We visited newspaper offices in Albuquerque and Santa Fe, New Mexico, and Syracuse, N. Y. to read back issues. We also were able to learn of several private collections of material

that included news clippings, handbills, and other material contemporary to the case. We did research on British newspapers and periodicals relative to the Fuchs case at the New York office of the British Information Service.

We read at the New York Public Library all Congressional material relative to the case, ordered what was available from the Government Printing Office, and made copies or notes of the remainder. We studied the complete trial and appeal records of the Rosenberg-Sobell case at Foley Square (purchased the printed transcript) and also secured copies of various legal briefs from the files of Emanuel Bloch. We secured and copied the records of the Slack case from a mid-west records depository; journeyed to Philadelphia and copied all records of the case of Harry Gold there and to Albuquerque to obtain other Gold records; obtained what is probably the only existing record of the related Smilg case; secured from the Supreme Court in Washington the records of the Dayton case; obtained the Perl trial record, the Vago trial record and the Remington record; and spent a long hot summer at the Federal Records Center in N. Y. studying and copying from the Brothman-Moscowitz trial transcripts.

We then assembled voluminous files on key persons, events, and organizations related to the case. In this file we

collected magazine articles--obtained from back number magazine shops or photocopied--and notes of books, newspaper stories, Congressional hearings, etc.

After this necessary preliminary work, we began the most essential and arduous part of our research. Our object was to answer certain questions about the case than had been raised by the publicly-available material that we had collected and studied.

We interviewed dozens of persons, some several times, and kept careful written records of these interviews. We also wrote letters to scores of people requesting information. We obtained permission from the Department of Justice and the U.S. Attorney in the Southern District of N. Y. to see and obtain copies of the trial exhibits in the case. We brought a photographer to his office and photographed several of these exhibits. We visited Albuquerque, Santa Fe and El Paso in connection with one of these exhibits--a hotel registration card of Harry Gold's. We identified and located a clerk whose initials appear on the 15-year-old hotel card and obtained samples of her handwriting for analysis. We also obtained in New Mexico bank and other records and information relating to David and Ruth Greenglass

who had maintained an apartment in that city at the time of the alleged crime.

We wrote to the Attorney General and received permission to interview a Department of Justice attorney said to be expert on the case and did so in Washington. We also interviewed in Washington an AEC official who had testified at the trial. We corresponded with various eminent scientists, including Openheimer, Kistiakowski, and Urey, in an attempt to clarify scientific aspects of the trial evidence; we also secured records and information from the atomic energy research center at Los Alamos.

We discovered the existence of pre-trial recorded interviews between Harry Gold and his attorney and we obtained copies of these. We also secured copies of extensive autobiographical material handwritten by Gold as well as many letters and reports written by him to his attorneys. We visited a small East Side photo studio mentioned in trial testimony as the source of alleged passport photos and found new evidence there--a dated FBI receipt highly relevant to our inquiry.

Not all of our efforts were successful and those that were not often were highly time-consuming. For example, to

obtain additional material concerning Klaus Fuchs--and particularly his confession to British authorities--we hired a researcher in London to check legal records; attempted to contact Fuchs in Dresden to arrange a visit and interview; wrote to another author who we thought might have valuable material; contacted a scientific associate of Fuchs; located an American who had known Fuchs well at Los Alamos during World War II, and engaged in extensive correspondence with the Joint Congressional Committee on Atomic Energy.

Although the writing of history necessarily involves interpretation, the author has a special responsibility for scrupulous accuracy in reporting facts, quotations, and other data so as not to distort or falsify. In the writing of our manuscript, we took great care to quote all material, including trial records, precisely and to indicate any deletions with elipses. Whenever possible, we worked with primary sources which is to say with a trial manuscript, memoir, or record of a Congressional hearing--rather than a secondary source quoting them. In our chapter of Rosenberg letters, we took care to obtain the original letters so that we could carefully check the text.

We also included 31 printed pages of sources to enable other scholars to authenticate and utilize our material and 12 pages of index. Our book contains illustrations of key trial exhibits, including the sketches alleged to be replicas of those said to have been passed.

At the conclusion of our work, all possible facts and quotations were rechecked in a last effort to avoid errors. Finally, certain technical material was submitted to a well-known scientist for an opinion as to its accuracy.

MIRIAM SCHNEIR

WALTER SCHNEIR

Sworn to before me this
25 day of [illegible], 1975.

Notary Public

[illegible]
NOTARY PUBLIC, STATE OF NEW YORK
No. 31-[illegible]
Qualified in New York County
Commission Expires March 30, 1976

EXHIBIT 19
[Attached to foregoing Affidavit of Marshall Perlin]

Affidavit of Morton Sobell

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

MORTON SOBELL, being duly sworn, deposes and says:

I was a defendant along with Ethel and Julius Rosenberg in the case of United States v. Julius Rosenberg, Ethel Rosenberg and Morton Sobell. I am the sole surviving defendant of that trial. All of the attorneys representing the defendants at the trial have passed away.

Louis Nizer, on page 4 of his book, stated that before writing he not only knew every inch of the record but that he had exhaustively researched the matter and had "known" or sought information from "every person I could find who touched their [Rosenbergs] lives or deaths as if I were a reporter on a Pullitzer prize mission." That is a patent untruth.

I was released from federal custody in January of 1969, long prior to the time Nizer even commenced work on a book or script about the case. He never interviewed me; he never sought to obtain any information from me either in

writing or orally; he never sought any facts from me or from Helen Sobell, my wife, as to what transpired in the courtroom or courthouse that was not reflected in the record or the content of any of the conversations had between the defendants and any of the lawyers. Thus his "reconstructions" are false and fictitious, and obviously not the result of any search for truth. Quite to the contrary.

THE IMPLOSION CONSPIRACY is flawed throughout with factual misstatements both in respect to the court record and what transpired there, as well as to events outside the courtroom. I have touched upon just a few of them in reviews of that book that I have written. One of my reviews was published in the New York Law Journal of April 26, 1963 and I incorporate the same herein.

Helen Sobell attended the entire trial. She keenly observed what transpired in the courtroom, the demeanor of all of the lawyers, the trial judge and the defendants and of the witnesses as well. Notwithstanding that fact, Nizer never sought information or the verification of any facts from Helen Sobell. While the "legendary" attorney

purports to write a comprehensive study of the case, he studiously avoids even mentioning any of the facts disclosed after the execution of Ethel and Julius Rosenberg which at the very least raised questions as to the credibility of witnesses and the truthfulness and validity of evidence and claims of the prosecution upon which he relies to prove his premise of how well our system of criminal justice works.

To touch upon just two or three false and fictitious statements of a personal nature:

At pages 365-367 Nizer purports to describe the demeanor and conversations held by Julius and Ethel Rosenberg and myself with our lawyers in the basement of the United States Courthouse at Foley Square "after the sentencing." Nizer "reconstructs" what had allegedly transpired. Almost everything about this "reconstruction" is untrue, the product at best of fantasy - or malicious falsehood. In the first place, the meeting took place after the Rosenbergs and I had been found guilty, not after the sentencing. None of the defendants was downcast or

red-eyed as Nizer claims. Rather, it was the lawyers who were downcast and it was the defendants who tried to cheer them up. Furthermore, contrary to what Nizer wrote, we did not discuss the case. Our talk was lighthearted and on other matters. I write what transpired at page 250 of my book ON DOING TIME.

Nizer writes on page 358 of his book that immediately after my sentencing, "Mrs. Sobell's shriek was heard above the new outburst in the rear." Once again, false. When I was sentenced Helen Sobell was only ten to fifteen feet away from me. She remained composed the entire time. We exchanged silent but feeling glances.

Equally inaccurate and false is Nizer's description (page 357) of Julius and Ethel Rosenberg's claimed loss of composure and conduct when they heard their sentences imposed. I was less than ten feet from them. Neither one of them reacted visibly to the death sentences. They stood strong and silent in the face of the horrendous

sentences. Nizer's description is a pure canard.

Morton Sobell

Morton Sobell

Sworn to before me this

3rd day of April, 1975.

MARSHALL PERLIN
NOTARY PUBLIC, STATE OF NEW YORK
No. 31-0527700
Qualified in New York County
Commission Expires March 30, 1976

EXHIBIT 20
[Attached to foregoing Affidavit of Marshall Perlin]

Affidavit of Edgar L. Doctorow

STATE OF NEW YORK)
: ss.: AFFIDAVIT
COUNTY OF NEW YORK)

I, EDGAR L. DOCTOROW, being duly sworn, depose and say:

1. I reside at 170 Broadview Avenue, New Rochelle, New York and am the author of, among other things, the novel entitled "The Book of Daniel" (the "Novel") which was published in 1971 by Random House, Inc.

2. The Novel was written by me as a work of fiction and has not been held out by me as a work of non-fiction.

3. To my knowledge, I have never spoken or otherwise had any communications with Louis Nizer concerning the Novel or the book written by him entitled "The Implosion Conspiracy."

Edgar L. Doctorow

Sworn to before me this
[illegible] day of March, 1975.

RUTH J. SIEGELMAN
Notary Public, State of New York
No. 31-9127850
Qualified in New York County
[illegible]

Notary Public

10.

EXHIBIT 21
[Attached to foregoing Affidavit of Marshall Perlin]

Affidavit of Austin Olney

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

AUSTIN OLNEY, being duly sworn, deposes and says:

I am a Director of HOUGHTON MIFFLIN COMPANY and have been employed in that capacity for ten years. Prior thereto I have been employed in the publishing business for twenty-one years, which encompasses the procedures, practices and rules relating to permission and use of copyrighted writings of others used in our published works when permission of the copyright owner is required. I am personally acquainted with the rules, customs and practices of the publishing industry regarding the requisites and procedures for use of copyrighted material by someone other than the copyright owner, as well as such rules and practices of HOUGHTON MIFFLIN COMPANY, a publishing firm which has been in the book publishing business for more than 100 years.

As a guide to the performance of their duties in these respects, HOUGHTON MIFFLIN COMPANY has enunciated

these standards and criteria to its employees. The company has also disseminated these standards and criteria to the authors with whom it enters into publishing agreements, as part of a booklet entitled "A Guide for Authors." I set forth below the relevant provisions contained in this booklet:

> "Often an author wishes to incorporate in a manuscript all or part of articles, stories, or poems he has written himself and previously published in magazines that hold the basic copyright for the work. In such cases you should obtain assignments of copyright from the journals of original publication before reprinting the material in your book. Send these assignments to your editor at Houghton Mifflin, who will arrange to have the documents recorded in the Copyright Office in Washington. To be fully effective an assignment must be recorded promptly after its execution.
>
> If you wish to quote passages from the works of other writers, you should determine whether the material is still covered by copyright. The United States copyright law provides copyright protection for an initial term of 28 years after publication, and an optional renewal term for an additional 28 years. Legislation now before Congress, if enacted, will change the copyright term to the life of the author plus 50 years. To protect the liberary interests of individuals who would benefit from this new provision, Congress has recently extended from year to year the renewal term for works that would otherwise have passed into the public domain while the new legislation is being considered. At present, therefore, it is safest to assume that anything published in this country in 1906 or later is still protected by copyright. Publications of the United States Government, however, are in the public domain and may be quoted freely; as may any other work whose copyright has expired.
>
> In Great Britain copyright protection already extends over the author's lifetime plus 50 years. It is thus possible for a work published in both Great Britain and

"the United States to be free of copyright in the United States but protected in Britain, Canada, and elsewhere. When you quote from material that is in the public domain in the United States but in copyright in other countries, the foreign copyright proprietor's permission should be obtained.

As a consideration to the reader and as good scholarly practice, it is customary to identify the source of quoted material whether in copyright or not. For material in copyright, credit to source, author, and publisher is essential. If a publisher, in granting you permission to quote, specifies a particular form of acknowledgment, you should follow that form, even if it is inconsistent (as it probably will be) with your general footnote style, or with the forms specified by other permission-granters.

'FAIR USE'

How much may be quoted without specific permission has never been satisfactorily decided. 'Fair use' is a matter of judgment, not of measurement, and we can offer you only approximate guidance. Some publishers (ourselves included) permit the use of up to 300 words from their publications, without formal application, provided the extract is not a complete unit such as an article, chapter, table, poem, or stanza of a poem, and provided, of course, due credit is given. We suggest to our authors that they consider 300 words of prose as the maximum amount to be quoted from a copyrighted source without specific permission. If from one source you use several short extracts which, taken together, amount to more than 300 words, then permission should be requested, just as for a single quotation of that length. In quoting verse, it is wise to ask permission for the use of more than two lines; and if only two lines constitute a stanza or a substantial part of the whole poem, then permission should be asked even for this much. More leeway in quoting is allowable in the writing of literary criticism.

In an anthology or book of readings, permission should be obtained for every selection in copyright, no matter how short."

These regulations are fully in conformance with the practices and ethics of the industry and reflect the standard method of operation given full respect and recognition, recognizing the legal rights of owners, authors and publishers of copyrighted works.

In specifying the maximum number of words, in totality which may be extracted from a copyrighted work, this number represents the outer limits of permissible use without obtaining the written consent of the copyright owner. The computation is based on numbers of words in totality whether separate extracts and the total wherever located in the published work containing the copyrighted material.

AUSTIN OLNEY

Sworn to before me this

day of April, 1975.

MARSHALL PERLIN
NOTARY PUBLIC, STATE OF NEW YORK
No. 31-8[illegible]7700
Qualified in New York County
Commission Expires March 30, 19[illegible]

1 Copies Received

Date FEBRUARY 1, 1977

Firm Phillips, Nizer, Benjamin, et al

By Bernard Rothman

1 Copies Received

Date FEBRUARY 1, 1977

Firm SATTERLEE & STEPHENS

By J.H.F.